NOTICE OF REGULAR MEETING CITY COUNCIL

DATE DECEMBER 15, 2015

TIME
Immediately following
Municipal Authority Meeting

PLACE COUNCIL CHAMBERS

AGENDA

- 1. Call to Order
- 2. Roll Call
- 3. Comments from the Audience
- 4. Consent Agenda
 - a. City Council Regular Meeting Dec 1, 2015 6:30 PM
 - b. Receive and Acknowledge Receipt of Claims List
 - c. Acknowledge monthly reports, notices and minutes as follows:
 - 1. City & School Pool Report (Sept & Oct)
 - 2. Main Street Altus (November 19, 2015)
- Informational Presentation on the Government Finance Officers Association (GFOA) Budget Award Process and How it Will Affect Altus' FY 2016-17 Budget Process by Assistant City Manager Matt Wojnowski
- 6. Consider, Discuss and Vote to Approve Ordinance No. 2015-___ Amending the Altus Code to Reflect the Current Charged Fees, Inserting the Months for Basketball and Football, and Revising Section 21-2(A) and (C) to Add Cheerleading (\$25) and Increasing Fees for Football, Use of the Swimming Pool and Water Slides Including a Private Party in the Evening at the Swimming Pool, or Vote to Take Any Other Appropriate Action.
- 7. Consider, Discuss and Vote to Approve Resolution No. 2015-___ Accepting a Gift from Wisdom's Call, LLC for Certain Real Property Commonly Known as 418 E Cypress, Altus, OK
- 8. Consider, Discuss and Vote to Approve Contracts for Construction Manager Services by and Between the City of Altus, Oklahoma and Joe D. Hall as Construction Manager for Both the Altus Senior Activity Center and the Altus Fire Rescue Central Fire Station or Take Any Other Appropriate Action.

- 9. Consider, Discuss and Vote to Approve an Agreement with the Oklahoma Tax Commission (OTC) for Administration of the Sales and Use Tax Ordinances of the City of Altus and an Agreement to Engage in Compliance Activities by the City of Altus And/Or Take Any Other Appropriate Action
- 10. Review, discuss and possible action on other new business, if any, which has arisen since the posting of the agenda and which could not have been reasonably foreseen prior to posting of the agenda. (25 O.S.A. Section 3 -111 (9)
- 11. Mayor's Appointments
- 12. City Manager's comments and reports (discussion only)
- 13. City Council's member's comments and reports
- 14. Mayor's comments and reports
- 15. Adjourn

Next Resolution No. 2015-43 Next Ordinance No. 2015-31

The City of Altus encourages participation from all of its citizens. If participation at any public meeting is not possible due to a disability, notification to the Mayor's office at least 48 hours prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive the 48 hour rule if signing is not the necessary accommodation. Call 481-2202 to make the necessary arrangements. We will accommodate you anytime and in every way possible. Just call and let us know your needs.

To be completed by person filing notice:

	NAME:	Debbie Davis
	TITLE:	City Clerk
	ADDRESS:	509 S. Main
		Altus, OK 73521
	PHONE:	(580) 481-2216
Filed in the office of the City Clerk/Treasurer at	a.m./p.1	n. on
Signed:		
Clerk/Deputy Clerk		

ALTUS CITY COUNCIL MEETING MINUTES DECEMBER 1, 2015

1. CALL TO ORDER

The City Council of Altus, Jackson County met in regular session Tuesday, December 1, 2015 at 7:11 p.m. in the City Council Chambers of City Hall. Notice of the agenda was duly filed and posted in the office of the City Clerk, November 30, 2015 at 8:52 a.m.

2. ROLL CALL

Members Present: Chris Riffle, Rick Henry, Doyle Jencks, Jon Kidwell, Jason Winters, , Dwayne Martin, Perry Shelton, Kevin McAuliffe

Absent: Jack Smiley

Others Present: David Fuqua, Matt Wojnowski, Jan Neufeld, Catherine Coke, Debbie Davis, Johnny Barron, Linda Walker, Ken Pike, Sharon Sutton, Tracy Sullivan, Kyle Davis, Angie & Dennis Murphy, Tim Murphy, Lloyd Colston, Mike Villareal, Freddy Perez and other public.

Rick Henry, Vice Mayor opened the meeting.

3. COMMENTS FROM THE AUDIENCE

None

4. CONSENT AGENDA

A APPROVE MINUTES FOR ALTUS CITY COUNCIL MEETING ON DECEMBER 1, 2015.

B. RECEIVE AND ACKNOWLEDGE RECEIPT OF CLAIMS LIST

- C. BUDGET AMENDMENT IN THE AMOUNT OF \$14,500 RECOGNIZING THE USE OF UN-BUDGETED SURPLUS (FUND BALANCE) AND APPROPRIATING IT TO BE SPEND ON REVAMPING THE CITY WEBSITE.
- D. BUDGET AMENDMENT IN THE AMOUNT OF \$2,000 RECOGNIZING THE USE OF UN-BUDGETED SURPLUS (FUND BALANCE) AND APPROPRIATING IT TO PURCHASE IPADS FOR CITY COUNCIL.

RESULT: APPROVED [UNANIMOUS] (With Item C removed for discussion.)

MOVER: Perry Shelton, Councilman SECONDER: Jon Kidwell, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT: Smiley

ITEM C

RESULT: APPROVED [UNANIMOUS]
MOVER: Jason Winters, Councilman
SECONDER: Jon Kidwell, Councilman

AYES: Martin, Shelton, Jencks, Henry, McAuliffe, Riffle, Winters, Kidwell

ABSENT: Smiley

5. CONSIDER, DISCUSS AND VOTE TO EITHER APPROVE THE REGULAR MEETING DATES FOR THE ALTUS CITY COUNCIL FOR CALENDAR YEAR 2016, OR VOTE TO CHANGE SCHEDULED DATE(S) TO ALTERNATE DATE(S) AS RECOMMENDED BY THE COUNCIL MEMBERS.

This item presented by Vice-Chairman, Rick Henry

Approved with the exception of March 15, 2015 which was approved to be changed to March 22, 2016 because of Quail Breakfast and Spring Break.

RESULT: APPROVED [UNANIMOUS]
MOVER: Chris Riffle, Councilman
SECONDER: Kevin McAuliffe, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT: Smiley

6. CONSIDER, DISCUSS AND VOTE TO AWARD BANKING SERVICES TO THE BEST BIDDER(S) AS RECOMMENDED BY STAFF BASED ON PROPOSALS RECEIVED.

This item presented by Debbie Davis, City Clerk

Merchant Services and Investment Services will wait until later.

RESULT: APPROVED [UNANIMOUS]

MOVER: Jon Kidwell, Councilman (Items pertaining to checking, depository bank, purchase cards for

PAGE 3

for the vendors noted)

SECONDER: Doyle Jencks, Council Member

Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle **AYES:**

ABSENT: Smilev

LOCKBOX

RESULT: APPROVED [UNANIMOUS] MOVER: Kevin McAuliffe, Council Member SECONDER: Jason Winters, Council Member

AYES: Jencks, Kidwell, McAuliffe, Riffle, Shelton, Martin, Henry, Winters

ABSENT: Smiley

7. CONSIDER, DISCUSS AND VOTE TO DECLARE SURPLUS AND AUTHORIZE SELLING OR OTHERWISE DISPOSING OF CITY OWNED MATERIALS AND **EQUIPMENT.**

This item presented by Catherine Coke, City Attorney

The vote was made to give a 30 day written notice to terminate the Collection Contract for the AMA and the City of Altus with American Municipal Services and to enter into a Contract for collections with the Law Firm of Perdue Brandon Fielder Collins and Mott, LLP., with the statement to include that either party could terminate the Collection Contract upon 30 days written notice.

APPROVED [7 TO 1] **RESULT: MOVER:** Chris Riffle, Councilman Kevin McAuliffe, Councilman SECONDER:

AYES: Henry, Shelton, Jencks, Winters, Kidwell, McAuliffe, Riffle

NAYS: Martin ABSENT: Smiley

CONSIDER, DISCUSS AND VOTE TO GIVE 30 DAYS WRITTEN NOTICE TO 8. COLLECTION CONTRACT WITH **AMERICAN** MUNICIPAL SERVICES AND TO ENTER INTO CONTRACT FOR COLLECTIONS WITH THE LAW FIRM OF PERDUE BRANDON FIELDER COLLINS AND MOTT, LLP, AFTER THE TERMINATION OF THE CONTRACT.

This item presented by Tony Fidelie (A companion item to #7 AMA)

DECEMBER 1, 2015

APPROVED [UNANIMOUS] Kevin McAuliffe, Councilman **SECONDER:** Jon Kidwell, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT:

RESULT:

MOVER:

9. CONSIDER, DISCUSS AND VOTE TO APPROVE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY AND THE OKLAHOMA DEPARTMENT OF PUBLIC SAFETY ON BEHALF OF DPS TROOP/DIVISION M TO USE THE CITY'S EMERGENCY OPERATIONS CENTER (EOC) IN AN EMERGENCY SITUATION WHICH RENDERS DPS OFFICE'S OFFICE SPACE UNUSABLE FOR NORMAL OPERATIONS, TO AUTHORIZE MAYOR TO SIGN THE MOU OR TO TAKE ANY OTHER APPROPRIATE ACTION.

This item presented by Lloyd Colston, Emergency Service Director

RESULT: APPROVED [UNANIMOUS] **MOVER:** Dwayne E. Martin, Councilman **SECONDER:** Perry Shelton, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT: Smiley

10. CONSIDER, DISCUSS AND VOTE TO APPROVE RESOLUTION NO. 2015- 42 REGARDING APPROVAL OF THE NEW INVESTMENT POLICY FOR THE CITY OF ALTUS THAT ALSO APPLIES TO THE ALTUS MUNICIPAL AUTHORITY AND REPEALING RESOLUTION NO. 2002-33 AND ANY OTHER RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND/OR TAKE ANY OTHER APPROPRIATE ACTION.

This item presented by Debbie Davis, City Clerk

RESULT: APPROVED [UNANIMOUS] MOVER: Perry Shelton, Councilman **SECONDER:** Jon Kidwell, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT: Smiley

11. VOTE TO GO INTO EXECUTIVE SESSION

Members of the Council went into Executive Session at 7:56 p.m.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Perry Shelton, Councilman
SECONDER: Rick Henry, Councilman

AYES: Henry, Shelton, Martin, Jencks, Winters, Kidwell, McAuliffe, Riffle

ABSENT: Smiley

EXECUTIVE SESSION ITEMS:

- 12. CONSIDER, DISCUSS AND VOTE TO DISCUSS IN EXECUTIVE SESSION THE INITIAL SIX-MONTH PERFORMANCE REVIEW OF THE CITY MANAGER, AN INDIVIDUAL SALARIED CITY EMPLOYEE, AS AUTHORIZED BY SECTION 307 (B)(1) OF TITLE 25. O.S.A. AND IN OPEN SESSION VOTE TO TAKE ANY APPROPRIATE ACTION.
- 13. DISCUSS IN EXECUTIVE SESSION THE APPRAISAL OF REAL PROPERTY, THE VALUE OF LEASED GROUNDWATER, PARAGRAPHS 3.2, 5.1 OF THE 2015 ROUND TIMBER GROUNDWATER LEASE AGREEMENT BETWEEN LEONARD KEITH SPEARS AND SHERRY K. SPEARS AND THE CITY AND PARAGRAPHS 2.1 2.3 OF EXHIBIT B TO SAID GROUNDWATER LEASE, AND IN OPEN SESSION, VOTE TO TAKE ANY APPROPRIATE ACTION, AS SPECIFICALLY AUTHORIZED BY SECTION 307 (B)(3) TITLE 25 O.S.A.
- 14. CONSIDERATION AND POSSIBLE ACTION REGARDING MOTIONS RELATING TO THE EXECUTIVE SESSION ITEM(S).

None

OUT OF EXECUTIVE SESSION AT 9:25 P.M.

ITEM # 12

No Action

ITEM #13

Update Only

15. REVIEW, DISCUSS AND POSSIBLE ACTION ON OTHER NEW BUSINESS, IF ANY, WHICH HAS ARISEN SINCE THE POSTING OF THE AGENDA AND WHICH COULD NOT HAVE BEEN REASONABLY FORESOON PRIOR TO POSTING OF THE AGENDA. (25 O.S.A. SECTION 3 -111 (9)

None

16. ADJOURN - 9:31 P.M.

(Consent Agenda)
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Rick Henry, Vice-Mayor

Debbie Davis, Clerk/Treasurer

Item No.	

Date: <u>December 15, 2015</u>

AGENDA ITEM COMMENTARY

ITEM TITLE: Receive and Acknowledge Receipt of Claims List

INITIATOR: Cindy Young, Purchasing Tech.

STAFF INFORMATION SOURCE: Cindy Young, Purrchasing Tech.

STAFF RECOMMENDATION: Stated Council Action



City of

A PROUD HERITAGE A PROMISING FUTURE TO SHARE!

ALTUS

Altus, OKLAHOMA 73521 - (580) 477-1950

MAYOR JACK SMILEY

CITY MANAGER DAVID FUQUA COUNCIL
Doyle Jencks
Rick Henry
Chris Riffle
Jason Winters
Perry Shelton
Kevin McAuliffe
Dwayne Martin
Jon Kidwell

December 8, 2015

To the Honorable Mayor and Members of the City Council City of Altus, Oklahoma

I hereby certify that the amount of this encumbrance has been entered against the designated appropriation accounts and that this encumbrance is within the authorized available balance of said appropriation.

Purchasing Agent
i dichasing rigent
State of Oklahoma
County of Jackson
On this 8th day of December, , 2015 before me
personally appeared in da Il Waller , to me known to be the
person described in and who executed the foregoing instrument.
//h (/2
Wentley My Commission Expires: 12/29/2018
/)

Dated this 8th day of December , 2015.

CATHERINE BENTLEY



PURCHASE ORDER CLAIM REGISTER

PAGE: SUMMARY REPOR

4.b.a

Attachment: CITY CLAIMS LIST 12-15-2015-1 (1136: Claims List)

P.O.#	VENDOR #	NAME	SUMMARY DESCRIPTION	DATE	INVOICE	AMOUNT	
DEPARTMEN		CITY COUNCIL					
16-1503			MISC. SUPPLIES		201512021137	24.23	
16-1344		WAL MART COMMUNITY BRC		11/2015		75.00	
16-1363	01-23021	WAL MART COMMUNITY BRC	WATER, SNACKS FOR	11/2015	003306	126.48	
					DEPARTMENT TOTAL:	225.71	
DEPARTMEN	NT: 02	ADMINISTRATIVE SERVICES					
16-1456	01-01490	CENTERPOINT ENERGY RESOURCE	CENATURAL GAS	11/2015	201511251126	205.36	
16-1496	01-01490	CENTERPOINT ENERGY RESOURCE	CENATURAL GAS	11/2015	201512021142	25.03	
16-1484	01-041406	CRAWFORD & ASSOCIATES, P.C	C.PROFESSIONAL SERVICES	12/2015	9411	22,405.55	
16-1194	01-042116	OKLA MUNICIPAL ASSURANCE G	RVEHICLE AND LIABILITY	12/2015	201512021144	41,854.58	
16-1469	01-043403	AT&T, INC	TELEPHONE SERVICE	11/2015	201511251129	1,309.00	
16-1494	01-043403	AT&T, INC	TELEPHONE SERVICE	11/2015	201512021141	2,699.87	
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	40.01	
16-1523		VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	105.38	
					DEPARTMENT TOTAL:	68,644.78	
DEPARTMEN	NT: 04	LAW					
16-1503	01-16042	PETTY CASH-CITY CLERK	MISC. SUPPLIES	11/2015	201512021137	38.00	
16-1447	01-23080	WEST GROUP	WEST PAYMENT CHARGES	11/2015	832819066	98.25	
					DEPARTMENT TOTAL:	136.25	
DEPARTME	NT: 07	POLICE-TRAFFIC DIVISION					
16-1465	01-01500	AUTOZONE, ALLDATA & AZ-CO	MBRAKE CALIPER	11/2015	0524216756	35.00	
16-1417	01-044771	GOODYEAR	TIRES	11/2015	275-1002441	1,772.96	
16-1531	01-044937	BILLY FOWLER	TUITION REIMBURSEMENT	12/2015	201512041153	834.75	
16-1346	01-045104	ELITE AUTOMOTIVE SERVICES	FIX PAINT ON UNITS	11/2015	20130527-001	3,311.26	
16-1503	01-16042	PETTY CASH-CITY CLERK	MISC. SUPPLIES	11/2015	201512021137	109.39	
					DEPARTMENT TOTAL:	6,063.36	
DEPARTME	NT: 08	POLICE-DETECTIVE DIV					
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	166.51	
					DEPARTMENT TOTAL:	166.51	

VENDOR # NAME

PURCHASE ORDER CLAIM REGISTER

INVOICE

DATE

SUMMARY DESCRIPTION

PAGE: SUMMARY REPOR

AMOUNT

4.b.a

DEPARTMEN	NT: 09	POLICE ADMINISTRATION				
16-1513	01-01260	FRANK H BELLIZZI	KEYS	12/2015	201512031147	30.00
16-1333	01-01310	ALTUS PRINTING CO., INC.	BUSINESS CARDS	11/2015	40339	196.00
16-1504	01-043492	FILE THIRTEEN, LLC P	SHREDDING OF PAPER	12/2015	43560	100.00
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	212.81
16-1488	01-045120	MCQUIGG, ERIC	REPLACE OFFICER EQUIPMENT	12/2015	201512021136	115.00
16-1503	01-16042	PETTY CASH-CITY CLERK	MISC. SUPPLIES	11/2015	201512021137	43.30
					DEPARTMENT TOTAL:	697.11
DEPARTMEN	NT: 10	POLICE-ANIMAL CONTROL				
16-1496	01-01490	CENTERPOINT ENERGY RESOURCE	CENATURAL GAS	11/2015	201512021142	128.62
16-1491	01-041825	CABLE ONE	INTERNET SERVICE	11/2015	201512021139	48.70
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	32.41
16-0740	01-044592	ANDREW'S HEAT & AIR CONDIT	TIAC REPAIR	11/2015	976	329.88
					DEPARTMENT TOTAL:	539.61
DEPARTMEN	NT: 11	FIRE DEPARTMENT				
16-1450	01-01250	ALTUS CLEANERS, INC	MONTHLY LAUNDRY SERVICE	11/2015	201511251125	429.35
16-1470	01-01490	CENTERPOINT ENERGY RESOURCE	CENATURAL GAS	11/2015	201511251128	98.59
16-1496	01-01490	CENTERPOINT ENERGY RESOURCE	CENATURAL GAS	11/2015	201512021142	24.01
16-0977	01-03123	CHIEF SUPPLY CORP.	BADGES	10/2015	382919	489.49
16-0977	01-03123	CHIEF SUPPLY CORP.	BADGES	11/2015	402897	324.00
16-1511	01-03274	CLINTON LAUNDRY & CLEANERS	,MONTHLY LAUNDRY SERVICE	12/2015	201512031148	477.52
16-0976	01-041267	CASCO FIRE	UNIFORM PANTS	11/2015	161975	274.00
16-1149	01-041267	CASCO FIRE	HELMETS AND CRESENTS	11/2015	161887	2,114.00
16-1110	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	11/2015	9755569203	65.51
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	160.04
16-1510	01-044455	INVESTIGATIVE CONCEPTS, IN	VBACKGROUND CHECK	12/2015	1212123207	19.95
16-1473	01-14018	NAT'L FIRE PROCT. ASSOC.	NFPA SUBSCRIPTION	12/2015	201512021135	1,305.00
					DEPARTMENT TOTAL:	5,781.46
DEPARTMEN	NT: 12	STREET DEPARTMENT				
16-1486	01-042244	ALTUS TIMES DISPLAY	JOB ADVERTISEMENT	11/2015	201512021143	257.40
16-1503	01-16042	PETTY CASH-CITY CLERK	MISC. SUPPLIES	11/2015	201512021137	6.00
					DEPARTMENT TOTAL:	263.40

VENDOR # NAME

P.O.#

PURCHASE ORDER CLAIM REGISTER

DATE

INVOICE

SUMMARY DESCRIPTION

PAGE: SUMMARY REPOR

AMOUNT

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(1136 : Claims List)
12-15-2015-1
tachment: CITY
Attachment: CITY CLAIMS LIST 12-15-2015-1

DEPARTMEN	NT: 13	PARKS				
16-1464	01-01500	AUTOZONE, ALLDATA & AZ-CO	OMFUEL PUMP	11/2015	0524274802	205.34
16-1506	01-041817	RICKY D. BREWER	PORTABLE TOILETS	12/2015	CA-121515	100.00
16-1482	01-043168	M & R UPHOLSTERY	PICKUP SEAT	11/2015	565714	190.00
					DEPARTMENT TOTAL:	495.34
DEPARTMEN	NT: 14	CEMETERY				
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	40.01
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	46.15
					DEPARTMENT TOTAL:	86.16
DEPARTMEN	NT: 15	BLDG MAINT				
16-1191	01-044592	ANDREW'S HEAT & AIR CONDIT	TIWILSON HEAD START	11/2015	1023	329.40
16-1416	01-10063	JANUS SUPPLY CO., INC	PARKS AND REC CLEANING	11/2015	91242	232.36
					DEPARTMENT TOTAL:	561.76
DEPARTMEN	NT: 17	PARKS/REC ADMINISTRATION				
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	40.01
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	52.69
					DEPARTMENT TOTAL:	92.70
DEPARTMEN	NT: 20	PLANNING DEPARTMENT				
16-1495	01-043146	STANDLEY SYSTEMS	COPIER LEASE	11/2015	559061	342.84
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	160.04
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	158.07
16-1525	01-043976	OKLAHOMA UNIFORM BUILDING	CSTATE PERMIT FEES	12/2015	201512031152	208.00
					DEPARTMENT TOTAL:	868.95
DEPARTMEN	NT: 23	FLEET MAINTENANCE				
16-1243	01-043550	NAPA AUTO PARTS	FILTERS	10/2015	210542	250.44
16-1351	01-043550	NAPA AUTO PARTS	FILTERS	11/2015	211793	200.43
					DEPARTMENT TOTAL:	450.87

PURCHASE ORDER CLAIM REGISTER

PAGE: SUMMARY REPOR

4.b.a

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P.O.#	VENDOR #	NAME	SUMMARY DESCRIPTION	DATE	INVOICE	AMOUNT	
DEPARTMEN		RECREATION					
16-1496			ENTERPOINT ENERGY RESOURCENATURAL GAS			162.24	
16-1446	01-10063	JANUS SUPPLY CO., INC	GYM CLEANING SUPPLY	11/2015	91255	182.29	
16-1173	01-23021	WAL MART COMMUNITY BRC		10/2015	008985	1,152.27	
16-1282	01-23021	WAL MART COMMUNITY BRC	BASKETBALL CONCESSION	11/2015	000752	649.78	
					DEPARTMENT TOTAL:	2,146.58	
DEPARTMEN	NT: 27	EMERGENCY SERVICES					
16-1521	01-043737	VERIZON WIRELESS	TELECOMMUNICATION SERVICE	11/2015	9755706568	40.01	
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	18.91	
16-1493	01-08052	HARMON ELECTRIC ASSOC., IN	CELECTRIC SERVICE	11/2015	201512021140	71.65	
					DEPARTMENT TOTAL:	130.57	
DEPARTMEN	NT: 29	INFORMATION SYSTEMS					
16-1494	01-043403	AT&T, INC	TELEPHONE SERVICE	11/2015	201512021141	125.79	
16-1492	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	11/2015	9755706571	20.04	
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	125.38	
					DEPARTMENT TOTAL:	271.21	
DEPARTMEN	NT: 32	POOL					
16-1470	01-01490	CENTERPOINT ENERGY RESOURC	ENATURAL GAS	11/2015	201511251128	896.03	
16-1357	01-23021	WAL MART COMMUNITY BRC	concession	11/2015	003002	295.13	
					DEPARTMENT TOTAL:	1,191.16	
DEPARTMEN	NT: 33	FINANCE DEPARTMENT					
16-1410	01-043454	ADVANTAGE OFFICE PRODUCTS,	OFFICE SUPPLIES	11/2015	0243142-001	199.28	
16-1483	01-23021	WAL MART COMMUNITY BRC	SUPPLIES	11/2015	009490	63.88	
					DEPARTMENT TOTAL:	263.16	
DEPARTMEN	NT: 34	PERSONNEL DEPARTMENT					
16-1504	01-043492	FILE THIRTEEN, LLC P	SHREDDING OF PAPER	12/2015	43560	150.00	
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	40.01	
					DEPARTMENT TOTAL:	190.01	
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VENDOR # NAME

P.O.#

PURCHASE ORDER CLAIM REGISTER

DATE

INVOICE

SUMMARY DESCRIPTION

PAGE: SUMMARY REPOR

AMOUNT

4.b.a

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EPARTMEI	NT: 38	CITY CLERK-TREASURER				
16-1495	01-043146	STANDLEY SYSTEMS	COPIER LEASE	12/2015	559062	186.66
16-1483	01-23021	WAL MART COMMUNITY BRC	SUPPLIES	11/2015	009490	63.88
					DEPARTMENT TOTAL:	250.54
DEPARTMEI	NT: 41	PUBLIC GOLF COURSE				
16-1491	01-041825	CABLE ONE	INTERNET SERVICE	11/2015	201512021139	83.76
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	48.14
16-1271	01-043781	TITLEIST, INC	RESTOCK FOR CLUBHOUSE	11/2015	901622070	1,267.03
16-1133	01-23021	WAL MART COMMUNITY BRC	Supplies	10/2015	006424	141.58
					DEPARTMENT TOTAL:	1,540.51
					FUND TOTAL:	91,057.71

12/04/2015 9:14 AM

FUND: 03 - WORKERS COMP FUND (03)

PURCHASE ORDER CLAIM REGISTER

DATE

INVOICE

PAGE: 6
SUMMARY REPOR

b.a

O.# VENDOR # NAME SUMMARY DESCRIPTION

AMOUNT

DEPARTMENT: 02 WORKMANS COMP

16-1439 01-043250 CROWE & DUNLEVY W/C ATTORNEY FEE/EXPENCES 11/2015 592191 24.46

DEPARTMENT TOTAL: 24.46

FUND TOTAL: 24.46

12/04/2015 9:14 AM

FUND: 14 - AIRPORT FUND (14)

PURCHASE ORDER CLAIM REGISTER

PAGE: SUMMARY REPOR

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P.O.#	VENDOR #	NAME	SUMMARY DESCRIPTION	DATE	INVOICE	AMOUNT
DEPARTMEN	T: 31	AIRPORT				
16-1496	01-01490	CENTERPOINT ENERGY RESOURCE	ENATURAL GAS	11/2015	201512021142	108.05
16-1400	01-042886	HOOTEN OIL CO., INC	AVGAS FUEL	11/2015	0012526-IN	20,982.35
16-1461	01-042886	HOOTEN OIL CO., INC	JET A FUEL	11/2015	0718424-IN	15,119.31
16-1523	01-043737	VERIZON WIRELESS	CELL PHONE CHARGES	12/2015	9755706569	17.59
					DEPARTMENT TOTAL:	36,227.30
					FUND TOTAL:	36,227.30

12/04/2015 9:14 AM PURCHASE ORDER CLAIM REGISTER

FUND: 16 - HOTEL/MOTEL TAX FUND (16)

PAGE: 8
SUMMARY REPOR

.b.a

P.O.# VENDOR # NAME SUMMARY DESCRIPTION DATE INVOICE AMOUNT

DEPARTMENT: 32 HOTEL/MOTEL TAX DEPT

16-1519 01-12051 ALTUS SOUTHWEST AREA NOVEMBER 2015 HOTEL/MOTEL 12/2015 201512031151 21,525.33

DEPARTMENT TOTAL: 21,525.33

FUND TOTAL: 21,525.33

12/04/2015 9:14 AM PURCHASE ORDER CLAIM REGISTER PAGE:

FUND: 50 - STRATEGIC PLANNING GRANT

CAPITAL IMPROVEMENTS

VENDOR # NAME

DEPARTMENT: 40

DATE

INVOICE

SUMMARY REPOR

AMOUNT

.b.a

SUMMARY DESCRIPTION

16-1485 01-044938 T & G CONSTRUCTION, INC. MAIN GATE RESURFING 11/2015 1 264,294.00 16-0895 01-06150 FOX, DRESCHLER & BRICKLEY, AAFB MAIN GATE RESURFACIN 11/2015 6998 8,594.50

DEPARTMENT TOTAL: 272,888.50

FUND TOTAL: 272,888.50

11/25/2015 11:01 AM FUND: 01 - GENERAL FUND (01) PURCHASE ORDER CLAIM REGISTER

PAGE: 1 SUMMARY REPOR

4.b.a

P.O.# VENDOR # NAME

SUMMARY DESCRIPTION

INVOICE

DATE

AMOUNT

DEPARTMENT: 07 POLICE-TRAFFIC DIVISION

16-0615 01-23180 WILMES SUPERSTORE, INC. FLEET FOR POLICE, ELECTRI 11/2015 201511251130 31,646.00

DEPARTMENT TOTAL: 31,646.00

GRAND TOTAL: 31,646.00



Attachment: REPORTS AND MINUTES 12-15-15 AGENDA (1136: Claims List)

A Proud Heritage
A Promising Future To Share!

City of

ALTUS

ALTUS, OKLAHOMA 73521 - (580) 477-1950

SWIMMING POOL SUPERVISOR MICHAEL SHIVE 580-481-2269 mshive@cityofaltus.org

STATEMENT

BREAKDOWN	MONTH: September 2015
\\/oto#	\$4.49.99

Water:	\$148.88
Sewer:	\$91.81
Garbage:	\$23.71
Electricity:	\$90.24
SWM:	\$3.31
Natural Gas:	\$258.34
Chemicals:	\$202.00
Staff:	\$3,271.00
TOTAL:	\$4,089.29

Hours of use by the City:	77
Hours of use by the School:	152

TOTAL BILL FOR THE SCHOOL:	\$2,714.29
TOTAL BILL FOR THE CITY:	\$1,375.00

The City upon request will furnish any supporting documents, which are required by the School.

CC:

City Clerk

Executive Secretary

Pool Manager

Michael Shive

Swimming Pool Supervisor

Attachment: REPORTS AND MINUTES 12-15-15 AGENDA (1136: Claims List)

City & School swimming pool monthly report

Month & Year: September 2015

School attendance: <u>1529</u> Public attendance: <u>983</u>

Total monthly attendance: 2512 Average daily attendance: 100

School usage hours: 152

City usage hours: 77

Total hours: 229

4.b.b

Senior Citizens attendance: 352

Handicapped attendance: 0

Visitors: 300

Children under 48 in.: 130
Monthly cash received: \$984

MONTHLY UTILITIES

Electric: \$90.24 Water \$148.88 Sewer: \$91.81 Gas: \$258.34

Sanitation: \$23.71 SWM: \$3.31 Chemicals: \$202.00

TOTAL: \$818.29

Staff Cost: \$ 3,271.00

Utilities & Staff Total Cost: \$4,089.29

SCHOOL SHARE

Utilities & staff Cost \$4,089.29

17.85716 Per hour X 152hours

Equals \$2,714.29

CITY SHARE

Utilities & staff Cost \$4,089.29

17.85716 Per hour X 77 hours

Equals \$1,375.00

Authorized Signature

Michael Drive

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4.b.b	USAGE SCHOOL	1	ADULT	CHILD	PASS	PARTY	STUDENT	SENIOR	CAP	VISTOR	TOTAL	POOL	PARTY	TOTAL	Pg.
	8	3	5	1	0	0	80	15	0	20	121	\$17	\$0	\$17	Packet
2	8	3	10	8	0	0	80	20	0	20	138	\$46	\$0	\$46	Pac
3	8	3	4	9	0	0	80	18	0	0	111	\$30	\$0	\$30	
. 4	8	3	4	9	0	0	80	15	0	0	108	\$30	\$0	\$30	
5	0	4	5	0	0	0	0	1	0	0	6	\$15	\$0	\$15	
6	0	2	0	8	0	30	0	0	0	0	38	\$0	\$250	\$250	
7	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
8	8	3	3	2	0	0	80	12	0	20	117	\$13	\$0	\$13	_
9	8	3	3	8	0	0	80	15	0	20	126	\$25	\$0	\$25	
10	8	3	21	13	0	0	83	15	0	10	142	\$47	\$0	\$47	
11	8	3	5	1	0	20	80	15	0	0	121	\$17	\$75	\$92	1
12	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
13	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
14	8	3	4	5	0	0	80	12	0	20	121	\$22	\$0	\$22	
15	. 8	3	3	1	0	0	80	15	0	20	119	\$11	\$0	\$11	
16	8	3	5	9	0	0	80	20	0	30	144	\$33	\$0	\$33	
17	8	3	4	9	0	0	83	20	0	7	123	\$30	\$0	\$30	
18	0	3	6	4	0	30	0	25	0	10	75	\$26	\$100	\$126	
19	0	4	4	1	0	0	0	1	0	0	6	\$14	\$0	\$14	1
20	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
21	8	3	3	6	0	0	80	15	0	20	124	\$21	\$0	\$21	1
22	8	3	9	0	0	0	80	20	0	20	129	\$21	\$0	\$21	1
23	8	3	4	8	0	0	80	15	0	20	127	\$28	\$0	\$28	1
24	8	3	5	10	0	0	82	13	0	12	122	\$35	\$0	\$35	_
25	0	3	3	2	0	0	0	15	0	3	23	\$13	\$0	\$13	1
26	0	4	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	-
27	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	-
28	8	3	6	8	0	0	81	15	0	8	118	\$34	\$0	\$34	
29	8	3	0	0	0	0	80	20	0	20	120	\$0	\$0	\$0	1
30	8	3	5	8	0	0	80	20	0	20	133	\$31	\$0	\$31	
31	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
TOTAL	152	77	121	130	0	80	1529	352	0	300	2512	\$559	\$425	\$984	
	September 2015														



SWIMMING POOL **SUPERVISOR** MICHAEL SHIVE 580-481-2269 mshive@cityofaltus.org A Promising Future To Share!

ALTUS, OKLAHOMA 73521 - (580) 477-1950

STATEMENT

BREAKDOWN	MONTH: October 2015
Water:	\$148.88
Sewer:	\$91.81
Garbage:	\$23.71
Electricity:	\$90.24
SWM:	\$3.31
Natural Gas:	\$486.65
Chemicals:	\$0.00
Staff:	\$3,271.00
TOTAL:	\$4,115.60
Hours of use by the City:	0.0

Hours of use by the City:	82
Hours of use by the School:	162

TOTAL BILL FOR THE SCHOOL:	\$2,732.49
TOTAL BILL FOR THE CITY:	\$1,383.11

The City upon request will furnish any supporting documents, which are required by the School.

CC:

City Clerk

Executive Secretary Pool Manager

Swimming Pool Supervisor

City & School swimming pool monthly report

Month & Year: October 2015

School attendance: <u>1686</u> Public attendance: <u>1020</u>

Total monthly attendance: 2706
Average daily attendance: 104

School usage hours: 162

City usage hours: 82

Total hours: 244

Senior Citizens attendance: 412

Handicapped attendance: 3

Visitors: 407

Children under 48 in.: 100 Monthly cash received: \$885

MONTHLY UTILITIES

Electric: \$90.24 Water \$148.88 Sewer: \$91.81 Gas: \$486.65

Sanitation: \$23.71 SWM: \$3.31 Chemicals: \$0.00

TOTAL: \$844.60

Staff Cost: \$ 3,271.00

Utilities & Staff Total Cost: \$4,115.60

SCHOOL SHARE

Utilities & staff Cost \$4,115.60

16.86721 Per hour X **162**hours

Equals \$2,732.49

CITY SHARE

Utilities & staff Cost \$4,115.60

16.86721 Per hour X 82 hours

Equals \$1,383.11

Authorized Signature Michael

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4.1	1	8	3	. 11	10	0	0	81	15	1	7	125	\$53	\$0	\$53	4 0
٦	2	8	3	0	. 0	0	0	80	20	0	0	100	\$0	\$0	\$0	Parket Pr
	3	0	4	0	0	0	10	0	0	0	0	10	\$0	\$50	\$50	
	4	0	0	0	0	0	0	0	0	0 ;	0	0	\$0	\$0	\$0	
L	5	8	3	3	7	0	0	80	15	1 /		114	\$23	\$0	\$23	
	6	8	3	11	0	0	0	80	20	0	40	141	\$3	\$0	\$3	
	7	8	3	1	6	0	0	80	20	0	40	147	\$15	\$0	\$15	
L	8	8	3	4	8	0	0	80	17	1	7	117	\$28	\$0	\$28	
-	9	8	3	4	0	0 '	0	80	15	0	0	99	\$12	\$0	\$12	
L	10	0	4	2	0	0	0	0	2	0	0	4	\$6	\$0	\$6	
L	11	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
L	12	8	3	6	5	0	0	80	20	0	20	131	\$388	\$0	\$388	
L	13	8	3	2	2	0	0	80	20	0	20	124	\$10	\$0	\$10	
	14	8	3	7	7	0	0	80	20	0	20	134	\$35	\$0	\$35	
	15	8	3	5	7	0	0	80	20	0	20	132	\$29	\$0	\$29	
L	16	2	3	6	0	0	0	80	20	0	0	106	\$18	\$0	\$18	
_	17	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
	18	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	
	19	0	3	3	7	0	0	0	20	0	20	50	\$23	\$0	\$23	
	20	8	3	1	2	0	0	80	20	0	20	123	\$7	\$0	\$7	
	21	8	3	4	8	0	0	80	20	0	20	132	\$28	\$0	\$28	
	22	8	3	3	10	0	0	80	20	0	10	123	\$29	\$0	\$29	
L	23	8	3	0	1	0	0	81	13	0	1	96	\$2	\$0	\$2	
	24	0	4	0	1	0	15	0	0	0	20	36	\$2	\$50	\$52	
	25	0	0	0	0	0	0	0	0	0	0 -	0	\$0	\$0	\$0	
<u> </u> :	26	8	3	0	6	0	0	80	20	0	40	146	\$12	\$0	\$12	
	27	8	3	2	2	0	0	80	20	0	20	124	\$10	\$0	\$10	
2	28	8	3	3	5	0	0	80	20	0	50	158	\$19	`\$0	\$19	
2	29	8	3	3	6	0	0	80	20	0	20	129	\$27	\$0	\$27	
3	30	8	3	1	0	0	0	84	15	0	3	103	\$3	\$0	\$3	
3	31	0	4	1	0	0	0	0	0	0	1	2	\$3	\$0	\$3	
то	TAL	162	82	73	100	0	25	1686	412	3	407	2706	\$785	\$100	\$885	
							7-4-	L	2015	-						Ŧ

October 2015



AGENDA

BOARD OF DIRECTORS MEETING NOVEMBER 19, 2015

Main Street Altus ~ 215 North Main ~ Altus, Oklahoma 73521 @ 8 AM~

- I. Call to Order, Roll Call and Determination of Quorum

 This Agenda was posted 24 hours prior to meeting date & the Altus Municipal Complex & at Main Street Altus
- II. Reading and Approval Minutes:
 - A. October 8, 2015 Minutes Cathy Stone, Secretary
 - B. October 27, 2015 Minutes Cathy Stone, Secretary
- III. Financial Report/ Payment of Claims Connie McQuinn, Treasurer
 - A. Approve/Disapprove Monthly Financial Statement
- IV. President's Report Krystal Martin, President
- V. New Business
 - A. Vote to Approve/Disapprove 2016 Meeting Dates
 - B. Vote for Board Member of the Year 2015
 - C. Vote to Approve/Disapprove New Website Expense to include mobile access, Facebook scroll, and business directory & website direct connection
- VI. Old Business
 - A. Board Training
- VII. Committee Reports
 - A. Design Actively Open, Committee Chair
 - Approve/Disapprove Purchase of Stop Sign & Street Signage's for the corner of North Hudson and West Commerce – Amy Cobb, Program Manager
 - B. Economic Restructuring Point Bonnie McAskill, Committee Chair
 - C. Organization Point Cathy Stone, Committee Chair
 - 1. Awards Committee Cathy, Bonnie & Connie, Committee
 - 2. Volunteer Development Cathy Stone, Chair
 - 3. Membership Drive Connie McQuinn, Chair
 - D. Promotion Point Actively Open, Committee Chair
 - 1. 15th Candy Cane Cash "Sweet" stakes set for Saturday, December 12, 2015
 - 2. 11th Walkin' on Chalk set for Sunday, March 13, 2016
 - 18th Rock-N-Rumble Car Show & Cruise set for Friday, May 6 & Saturday, May 7, 2016
- VIII. Manager's Report -Amy Jo Cobb, Program Manager
- IX. Open Discussion
- X. Adjournment Next meeting scheduled for Thursday, December 17, 2015

Filed City of Altus:

Date: 11-14-15 Time: 11/6 p.m.

Donita Beers

City Clerk

MAIN STREET ALTUS MINUTES

October 8th, 2015

- I. <u>CALL TO ORDER</u>: Krystal Martin, MSA President, called the meeting order at 8:00 a.m. Present were: Krystal Martin, Cathy Stone, Bonnie McAskill, Vicki Smades, Ralph VanOostrum, Shannon Preston, Connie McQuinn, Nikki Grauman, and Corey Graham. Also present was Amy Jo Cobb, Main Street Altus Program Manager, and guest, Loran Mayes.
- II. MINUTES of the September 2015 Meeting: Cathy Stone, Secretary, presented the minutes. Motion was made by Shannon Preston and seconded by Ralph VanOostrum to approve the minutes. The motion carried. (Yes- Krystal Martin, Cathy Stone, Bonnie McAskill, Vicki Smades, Ralph VanOostrum, Shannon Preston, Connie McQuinn, Nikki Grauman, and Corey Graham. No-none.)
- financial report to the Board Members. Motion to approve the Financial Report was made by Bonnie McAskill and seconded by Nikki Grauman. Motion was approved by all. (Yes- Krystal Martin, Cathy Stone, Bonnie McAskill, Vicki Smades, Ralph VanOostrum, Nikki Grauman, Shannon Preston, Connie McQuinn, and Corey Graham. No-none)
- IV. FINANCIAL YEAR-END A detailed year-end and taxes prepared by Donna Self, CPA was reviewed, discussed with no recommendations a motion to approve monthly financial report and year-end was moved by Corey Graham and seconded by Nikki Grauman to have Donna Self prepare taxes/CYA for Main Street Altus. Motion was approved. (Yes- Bonnie McAskill, Nikki Grauman, Krystal Martin, Cathy Stone, Vicki Smades, Ralph VanOostrum, Shannon Preston, Connie McQuinn, and Corey Graham. No-none)

V. <u>NEW BUSINESS</u>:

- A. Board Training: Training will be held October 27th from 7-10 p.m. Cathy Stone will provide refreshments.
- VI. OLD BUSINESS: None
- VII. COMMITTEE REPORTS:

A. <u>Design</u>- Actively Open, Committee Chair.

Signage: Barbara Burleson is continuing working with Amy Jo Cobb, MSA Program Manager, to facilitate new stop signs and street signage. A photo was distributed showing the new design. All four corners are included in the price of \$3,199. MSA will work with the City to accomplish the project. City pays 1/3, Sponsor Donors will pay 1/3, MSA will pay 1/3. Next focus corner will be the City Auditorium.

- B. <u>Economic Restructuring</u>- Bonnie McAskill, Committee Chair: A Welcome Basket will be given to new locksmith business owner.
- C. Organization Point Cathy Stone, Committee Chair
 - 1. Awards- A committee consisting of: Bonnie McAskill, Cathy Stone, Amy Cobb, Connie McQuinn, and Krystal Martin will meet on October 21st at 4:30 p.m. to organize the Awards Process.
 - 2. Volunteer Development- Cathy Stone, Chair:
 - a. The Developmental Volunteer Brochure has been sent to Rhonda Litsch of Altus Printing Company for review with suggestions for improvements noted. The brochure will then be sent back to the Board for final approval.
 - b. An organization of Youth Volunteers is ongoing.

c.

- D. <u>Promotion Point</u>- Actively Open, Committee Chair
 - 1. 21st Cotton Pickin' Chili Cook-Off made a profit of \$2,400. 800 tasting kits were sold.
 - 2. 15th Candy Cane Cash "Sweet" stakes is set for Saturday, December 12, 2015. Ralph VanOostrum distributed a list of businesses who have signed up to participate in the upcoming Candy Cane Cash project. An Information sheet and Registration Forms were given to each Board Member with a request for each Board Member to find more participants. The goal is to sign up 100 businesses. Altus Live will provide entertainment from 8- 10 a.m. The drawing will be held from 10-11 a.m.
 - 3. 11th Walkin' on Chalk is set for Sunday, March 13th, 2015. Loran Mayes, guest representing Altus Live, discussed the need to reconsider the scheduled date due to the schools Spring Break. Discussion was tabled and will be discussed at the next meeting.
 - 4. 18th Rock-N-Rumble is set for Friday, May 6th, and Saturday, May 7th, 2016.

- VIII. OPEN DISCUSSION Concerns were presented as to whether to include KHOWL in the Candy Cane Cash event. Renewed discussion will be held at the next meeting.
- IX. <u>ADJOURN</u>- Motion was made by Corey Graham and seconded by Connie McQuinn to adjourn. Motion passes and was approved by all. (Yes- Krystal Martin, Cathy Stone, Connie McQuinn, Bonnie McAskill, Vicki Smades, Ralph VanOostrum, Nikki Grauman, Shannon Preston, and Corey Graham. No-none)

Respectfully submitted by Cathy Stone, MSA Secretary

MAIN STREET ALTUS MINUTES

Special Meeting

October 27th, 2015

CALL TO ORDER: Krystal Martin, MSA President, called the meeting order at 8:25 p.m. Present were: Krystal Martin, Cathy Stone, Bonnie McAskill, Kim Sellers, Vicki Smades, Ralph VanOostrum, Shannon Preston, Connie McQuinn, Drew George, and Cory Graham. Also present was Amy Jo Cobb, Main Street Altus Program Manager.

II. NEW BUSINESS:

- A. A discussion was held concerning the negative incidents and circumstances leading up to the necessity to discontinue all association with KHOWL radio station. An email received by KHOWL radio station owner was read to Board Members in which it was stated KHOWL & Monarch, which is managed by KHOWL owner, would no longer associate with Main Street Altus. President, Krystal Martin, explained the facts leading up to the need for Board Members to vote on the situation to make a clear statement of full acceptance of the email from KHOWL and of fully endorsing the necessity of no longer associating with KHOWL/Monarch Studios.
 - A motion was made by Corey Graham and seconded by Drew George to fully accept the email sent by KHOWL and to fully endorse the necessity of no longer associating with KHOWL/Monarch Studios. Motion passes. (Yes- Kyrstal Martin, Cathy Stone, Connie McQuinn, Ralph VanOostrum, Kim Sellers, Vicki Smades, Drew George, Cory Graham, Shannon Preston, and Bonnie McAskill. No-None)
- B. A discussion was held concerning Board Term Limits. A motion was made by Bonnie McAskill and seconded by Connie McQuinn to put into the By-Laws a limit for Board Members to 2 consecutive three-year terms after which the Board Member must rotate off the Board for one year. Motion passes. (Yes- Krystal Martin, Cathy Stone, Connie McQuinn, Ralph VanOostrum, Kim Sellers, Vicki Smades, Drew George, Cory Graham, Shannon Preston, and Bonnie McAskill. No-None)
- C. Advisory Board: A motion was made by Bonnie McAskill and seconded by Shannon Preston to form an Advisory Board which will meet quarterly. Motion passes. (Yes- Krystal Martin, Cathy Stone, Connie McQuinn, Ralph VanOostrum, Kim Sellers, Vicki Smades, Drew George, Cory Graham, Shannon Preston and Bonnie McAskill. No-None) It is suggested a Reception be held for newly chosen Advisory Board Members and a photo made to publish in the newspaper.
- III. ADJOURN- Motion was made by Shannon Preston and seconded by Ralph VanOostrum to adjourn. Motion passes and was approved by all. (Yes- Krystal Martin, Cathy Stone, Connie McQuinn, Bonnie McAskill, Kim Sellers, Vicki Smades, Ralph VanOostrum, Drew George, Shannon Preston, and Cory Graham. No-none)

Respectfully submitted by Cathy Stone, MSA Secretary

10/31/15 MOR Acct.

MOR 11/4/2015

Reconciliation Summary

Page 1

			BANK STATEMENT CLEARED TRANSACTIONS:				
14,157.41			Previous Balance;				
0.00 1.80 0.00 0.00	Items Item Items Items	0 1 0 0	Checks and Payments Deposits and Other Credits Service Charge Interest Earned				
14,159.21			Ending Balance of Bank Statement:				
14,159.21			YOUR RECORDS UNCLEARED TRANSACTIONS: Cleared Balance:				
0.00 0.00	Items Items	0	Checks and Payments Deposits and Other Credits				
14,159.21 0.00 0.00	Items Items	0	Register Balance as of 11/4/2015: Checks and Payments Deposits and Other Credits				
14,159.21			Register Ending Balance:				

Attachment: REPORTS AND MINUTES 12-15-15 AGENDA (1136: Claims List)

10/31/15 MOR Acct.

MOR 11/4/2015 Page 2

Uncleared Transaction Detail up to 11/4/2015

Date	Num	Payee	Memo	(Category	Clr	Amount
Uncleared Ch	ecks and Payme	ents					
Total Unclear	ed Checks and F	Payments		0	Items		0.00
Uncleared De	posits and Othe	r Credits					
Total Unclear	ed Deposits and	Other Credits		0	Items	t -	0.00
Total Unclear	ed Transactions			0	Items		0.00

10/31/15 Checking Acc

Checking 11/4/2015

Page 1
Reconciliation Summary

BANK STATEMENT CLEARED TRANSACTIONS:			
Previous Balance:			19,427.98
Checks and Payments Deposits and Other Credits Service Charge Interest Earned	30 18 0 0	Items Items Items Items	-14,189.03 19,399.81 0.00 0.00
Ending Balance of Bank Statement:			24,638.76
YOUR RECORDS UNCLEARED TRANSACTIONS:			
Cleared Balance:			24,638.76
Checks and Payments Deposits and Other Credits	4 4	Items Items	-679.73 0.00
Register Balance as of 10/31/2015: Checks and Payments Deposits and Other Credits	0	Items Items	23,959.03 0.00 0.00
Register Ending Balance:			23,959.03

Page 2

10/31/15 Checking Acc

Checking 11/4/2015

Uncleared Transaction Detail up to 10/31/2015

Date	Num	Payee	Memo	Category	Clr	Amount
Uncleared Che	cks and F	Payments				
10/27/2015 10/29/2015 10/29/2015 10/29/2015	4857 4856 4858 4859	APC Amy Jo Cobb City Of Altus US Post Master	utilities box rental	PROMOTIONS EXP: PERSONNEL EXPEN OFFICE EXPENSES: OFFICE EXPENSES:	N R	-20.00 -440.00 -72.73 -147.00
Total Uncleared	d Checks	and Payments		4 Items		-679.73
Uncleared Dep	osits and	Other Credits				
2/14/2015		**VOID**				0.00
4/7/2015 7/9/2015 10/26/2015	4714 4790 4854	**VOID** **VOID**Barbara Burleson **VOID****VOID****	travel Preserv Conf	PROFESSIONAL DE	V	0.00 0.00 0.00
Total Uncleared	d Deposit	s and Other Credits		4 Items		0.00
					-	
Total Uncleared	d Transac	tions		8 Items		-679.73

Main Street Altus Budget W	orksheet 2015	-2016			
July 1, 2015- June 30, 2016	1			11/1/2015	5
Sources of Cash			and the same of th		
Sources of Cash	-				
				Budgeted	
	Income	Expenses	Totals	Amount	
City of Altus	14,817.50		14,817.50	29,635.00	
Total Sources of Cash	14,817.50	0.00	14,817.50	29,635.00	
PROMOTION POINT			2.00	450.00	
Brick by Brick		1 054 44	0.00	150.00	
Candy Cane Cash	12,935.00	-4,064.41	8,870.59	15,000.00	
Chili Cook-off	12,158.00	-6,671.80	5,486.20	7,000.00	
Lights on the Square (2014)	90.00		90.00	-1,000.00	
Lights on the Square (2015)			0.00	1,500.00	
Event Banners	1 252 22		0.00	-1,000.00	
Rock-N-Rumble	1,250.00		1,250.00	22,000.00 -50.00	
Special Events Tax			0.00	3,000.00	
Walkin on Chalk	26 422 00	10 726 21	15 606 70	46,600.00	
	26,433.00	-10,736.21	15,696.79	70,000,00	
Total Sources of Cash	41,250.50	-10,736.21	30,514.29	68,435.00	
Total Sources of Cash	41,230,30	10,750.21	30/314123	00/100100	
Uses of Cash					
Uses of Cash					
DESIGN POINT			-:		
Alley Cats & Kittens			0.00	-200.00	
Alley Park			0.00	-200.00	
Depot			0.00	-1,000.00	
Facade Grants		-852.00	-852.00	-10,000.00	
Faux windows			0.00	-200.00	
Landscaping/Decorations			0.00		EDC \$500
Meeting`		-31.13	-31.13		
Public Arts Mural			0.00	600.00	look for public support
Restoration			0.00	5,000.00	
Seasonal Banners			0.00	0.00	EDC \$700
*Upper Floor Housing			0.00	-235.00	
· ·	-	-883.13	-883.13	-6,235.00	
ECONOMIC			1		
RESTRUCTURING POINT					
Business of the Quarter				-200.00	
*Business Recruitment				-1,000.00	Resturants & Night Life
*Merchant Round Tables				-400.00	
Mystery Shopper				-100.00	
Welcome Bucket				-200.00	
Total ER	0.00	0.00	0.00	-1,900.00	
*					
ORGANIZATION POINT					
Annual Meeting			0.00	-1,500.00	
*Community Outreach -					
Advertisement & Self					
Promotion		-200.00	-200.00		EDC \$500 Shopping DT
Main Street Week			0.00	-500.00	
Membership 2015	250.00		250.00		
Membership 2016			0.00	5,800.00	
MOR (on account + interest	14.08		14.08	30.00	
OKMSC Awards & Banquet	304.00		304.00	-500.00	
Product Sales -				22.2	
Love Altus Shirts			0.00	400.00	
Product Sales - Ornaments			0.00	100.00	
Volunteer Development			0.00	-400.00	

	Torono	F		Budgeted	
Total Oversientian	Income	Expenses	Totals	Amount	
Total Organization	568.08	-200.00	368.08	930.00	
Office Expenses		 			
Equipment		-35.83	-35.83	-1,500.00	
Insurance			0.00		
Maintenance		-2,705.12	-2,705.12		
Membership/Dues/Subscriptions		-350.00	-350.00	-700.00	
Miscellaneous		-467.80			
Phone-Cell		-200.00	-200.00	-480.00	
Phone-Land		-682.85	-682.85	-1,800.00	
Postage		-147.00	-147.00	-400.00	
Rent & Utilities		-2,381.14	-2,381.14	-6,000.00	
Supplies		-847.11	-847.11	-2,000.00	
Tax Returns		-1,200.00		-1,500.00	
Web Site (internet)		-668.80	-668.80		Could get a sponsor
Total Office Expenses	-	-9,685.65	-9,685.65	-23,480.00	
Personnel					
				American Maria es a successo	
Program Manager		-7,660.29	-7,660.29	-29,500.00	
Employers FICA/MED		-845.43	-845.43	-2,500.00	
Employee FICA/MED		-657.91	-657.91	0.00	
Employee IRS (A)		-1,189.99	-1,189.99	0.00	
Employee State		-522.00		0.00	
Health Care Benefit		-2,000.00		-3,600.00	
Total Program Manager		-12,875.62	-12,875.62	-35,600.00	
Part Time Personnel		-1,093.02	-1,093.02	-6,000.00	
Employee FICA/MED		-62.96	-62.96	0,000.00	
Employer FICA/MED		-62.96	-62.96		
Employee IRS		-30.00	-30.00		
Total Part Time Personnel		-1,248.94	-1,218.94	-6,000.00	
Total Personnel		-14,124.56	14 124 F6	41 600 00	
. cea. i di comital	-	17,124.30	-14,124.56	-41,600.00	
Professional Development					
Conference Registrations			0.00	-600.00	
Local Meal Expenses		-80.20	-80.20	-300.00	
Training Materials			0.00	-50.00	
Travel, Lodging, Meal Exp		-2,057.31	-2,057.31	-4,000.00	W.
Total Prof. Dev.	-	-2,137.51	-2,057.31	-4,950.00	
Total Uses of Cash	568.08	-27,030.85	-26,382.57	-68,435.00	The second second second
Fotals	41,818.58	-37,767.06	4,051.52	0.00	



Posting of 2016 Meetings for MAIN STREET ALTUS BOARD OF DIRECTORS MEETING

Main Street Altus

~ Main Street Altus Board Room ~ 215 N. Main, Altus, Oklahoma 73521~

The Main Street Altus Board of Directors meets every month on the third Thursday (except for the months of March where the date does not reflect the third Thursday due to Spring Break and the month of October where the date does not reflect the third Thursday due to Fall Break). The monthly meetings begin at 8:00 a.m. in the Main Street Altus Board Room located at 215 North Main. The dates listed below reflect the 2016 meeting dates:

Thursday, January 21, 2016
Thursday, February 18, 2016
Thursday, March 10, 2016
Thursday, April 21, 2016
Thursday, May 19, 2016
Thursday, June 16, 2016
Thursday, July 21, 2016
Thursday, August 18, 2016
Thursday, September 15, 2016
Thursday, October 13, 2016
Thursday, November 17, 2016
Thursday, December 15, 2016

This notice was prepared by:

Amy Jo Cobb, Program Director, Main Street Altus
Approved by Board of Directors November 19, 2015

Filed City of Altus:

Date: _____ Time: _____

City Clerk

Item No.	

Date: <u>December 15, 2015</u>

AGENDA ITEM COMMENTARY

ITEM TITLE: Informational Presentation on the Government Finance Officers Association (GFOA) Budget Award Process and How it Will Affect Altus' FY 2016-17 Budget Process by Assistant City Manager Matt Wojnowski

INITIATOR: Matt Wojnowski

STAFF INFORMATION SOURCE: Matt Wojnowski

STAFF RECOMMENDATION: Stated Council Action

Item No.	

Date: <u>December 15, 2015</u>

AGENDA ITEM COMMENTARY

ITEM TITLE: Consider, Discuss and Vote to Approve Ordinance No. 2015-___ Amending the Altus Code to Reflect the Current Charged Fees, Inserting the Months for Basketball and Football, and Revising Section 21-2(A) and (C) to Add Cheerleading (\$25) and Increasing Fees for Football, Use of the Swimming Pool and Water Slides Including a Private Party in the Evening at the Swimming Pool, or Vote to Take Any Other Appropriate Action.

INITIATOR: Assistant City Manager

STAFF INFORMATION SOURCE: Assistant City Manager

BACKGROUND: This is a housekeeping item, not an increase in current fees. The purpose of this agenda item is to amend Section 21-2 of the Altus Code to reflect the current charged fees for Youth Recreation Programs and use of the Swimming Pool and Water Slides. In addition, staff is inserting the months of each sport, such as Basketball Sept—December and January—April and Football July—September—November.

Staff recommends passage of this agenda item.

FUNDING: n/a

EXHIBITS: Ordinance No. 2015-____

COUNCIL ACTION: Vote to Approve Ordinance No. 2015-___ Amending the Altus Code to Reflect the Current Charged Fees, Inserting the Months for Basketball and Football, and Revising Section 21-2(A) and (C) to Add Cheerleading (\$25) and Increasing Fees for Football, Use of the Swimming Pool and Water Slides Including a Private Party in the Evening at the Swimming Pool, or Vote to Take Any Other Appropriate Action.

STAFF RECOMMENDATION: Stated Council Action

[Published this	day of	, 2015.]
ORDIN	ANCE NO. 2015	

AN ORDINANCE OF THE CITY OF ALTUS, OKLAHOMA, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF ALTUS, OKLAHOMA, BE AMENDED BY REVISING SECTION 21-2 (A) AND (C) TO ADD SUBSECTION (4.A) THE YOUTH FEES FOR CHEERLEADING TO BE \$25.00, INCREASING THE YOUTH FEES FOR FOOTBALL FROM \$60.00--\$65.00 TO \$65.00, ADDING THE MONTHS FOR EACH YOUTH PROGRAM; INCREASING CERTAIN FEES FOR USE OF THE SWIMMING POOL AND WATER SLIDES BY \$15 TO \$25 AND DOUBLING THE FEE FOR A PRIVATE PARTY IN THE EVENING FROM \$100 TO \$200; AND REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREWITH.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALTUS, OKLAHOMA, THAT:

<u>Section 1</u>. That Section 21-2 subsections (a) and (c) of the Code of Ordinances of the City of Altus, Oklahoma be amended so that such subsections shall read as follows:

"Sec. 21-2. Recreation fees and charges.

(a) Youth programs:

(1)	Baseball <u>MarchMay</u>	\$25.00
(2)	Softball	\$25.00
(3)	Basketball SeptOct.—Dec. JanApril	\$25.00
(4)	Football <u>July—SeptemberNovember</u>	\$60.00 <u>-</u> \$65.00
(4.a)	Cheerleading	\$25.00
(5)	Late fee for all programs	\$10.00

(c) Swimming pool and water slides.

(d)

(5) *Prices for summer season passes and/or parties:*

Parties: Summer

Section 2 are hereby repea	2. That all other ordina lled.	nces or parts of ordinan	ices in conflict with	this ordinance
PASSEI	O AND APPROVED this _	day of	, 2015.	
		By:	SMILEY, Mayor	
ATTEST:				
DEBBIE DAVI	S, City Clerk			
APPROVED AS	S TO FORM AND LEGAI	LITY thisday of	f	_, 2015.
		Catho	erine J. Coke. City	 Attorney

Item No.	

Date: December 15, 2015

AGENDA ITEM COMMENTARY

ITEM TITLE: Consider, Discuss and Vote to Approve Resolution No. 2015-___ Accepting a Gift from Wisdom's Call, LLC for Certain Real Property Commonly Known as 418 E Cypress, Altus, OK

INITIATOR: Jason Winters

STAFF INFORMATION SOURCE: Catherine Coke, City Attorney; Barbara Burleson, Planning Director

BACKGROUND: The property owner Jason Winters of Wisdom's Call, LLC, wants to donate this property to the City. The City's policy is to have donations formalized by a Declaration of Gift and a Resolution accepting the gift. This procedure also allows the donor to get a tax benefit from the donation.

FUNDING: N/A

EXHIBITS: 1) Declaration of Gift; 2) Resolution No. 2015-___

COUNCIL ACTION: Vote to Approve Resolution No. 2015-___ Accepting a Gift from Wisdom's Call, LLC for Certain Real Property Commonly Known as 418 E Cypress, Altus, OK

STAFF RECOMMENDATION: Stated Council Action

This is a draft and will be updated on Monday

RESOLUTION NO. 2015-	
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WHEREAS, Wisdom's Call, LLC, has generously given, donated conveyed and transferred unto
the City, absolutely and without any condition, limitation or restriction, the following described
property:

Lots One (1) and Two (2) of Block Twelve (12) of the JULIAN ADDITION to the City of Altus, Oklahoma, according to the recorded plat thereof, aka 418 E Cypress St.

WHEREAS, abovementioned property is located in Jackson County, Altus, Oklahoma with a value based on gross assessed value from Jackson County Assessor's office of \$5,388.00.

WHEREAS, this property is located at 418 E Cypress St, Altus, OK

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ALTUS, OKLAHOMA:

Section 1. That the gift of the above described property is hereby accepted by the City of Altus, Oklahoma.

Section 2. That the Mayor and Council Members hereby express the appreciation and thanks of the City of Altus and the citizens thereof for said gift.

PASSED AND APPROVED this 15th day of December, 2015.

	Jack Smiley, Mayor	
Debbie Davis, City Clerk		

Approved as to form	n this 15 th	day of Dec	ember, 20)15

Catherine J. Coke, City Attorney

This is a draft and will be updated on Monday

DECLARATION OF GIFT

Desiring to promote the public welfare and benefit the City of Altus, Oklahoma and the citizens thereof and in consideration of acceptance by said City, Wisdom's Call, LLC, does hereby give, donate, convey and transfer unto said City, absolutely and without any condition, limitation or restriction, the following described property, located in Jackson County, Altus, Oklahoma, which has been valued by the Jackson County Assessor's Office at \$5,388.00, which includes the "improvements". This property was purchased with the intent to donate it to the City of Altus so that the structures could be torn down and new development built as these structures have been posted as dilapidated; to wit:

Lots One (1) and Two (2) of Block Twelve (12) of the JULIAN BLOCK ADDITION to the City of Altus, Oklahoma, according to the recorded plat thereof, aka 418 E Cypress St.

Dated this 15 th day of December, 2015.	
	Jason Winters
	Wisdom's Call, LLC
Subscribed and sworn to before me this 15^{th} da	y of December, 2015
	Notary Public
My commission expires:	
Commission Number	

Item No	
---------	--

Date: <u>December 15, 2015</u>

AGENDA ITEM COMMENTARY

ITEM TITLE: Consider, Discuss and Vote to Approve Contracts for Construction Manager Services by and Between the City of Altus, Oklahoma and Joe D. Hall as Construction Manager for Both the Altus Senior Activity Center and the Altus Fire Rescue - Central Fire Station or Take Any Other Appropriate Action.

INITIATOR: Phillip W. Beauchamp

STAFF INFORMATION SOURCE: Phillip W. Beauchamp

BACKGROUND: In an effort to better manage the projects as well as control cost of construction, Staff is seeking authorization to utilize the services of Joe D. Hall as a Construction Manager (CM) for both the Altus Fire Rescue – Central Fire Station project and the Altus Senior Activity Center, both MAPS Projects approved by the voters. Recently, the City held a Public Hearing and passed an ordinance to restate the purpose of the Altus Fire Rescue portion of MAPS Funds. State law does not require the City to solicit bids for Construction Manager services. Joe D. Hall has an extensive CM record and served as the CM for the Altus Public Schools portion of MAPS funding in remodeling Altus High School facilities.

FUNDING: MAPS / Altus Fire Rescue – Central Fire Station Project 55-5-40-5500.002 and Altus Senior Activity Center 54-5-40-5500.001

EXHIBITS: 01) Construction Manager Agreement for Altus Senior Activity Center; and 02) Construction Manager Agreement for the Altus Fire Rescue – Central Fire Station Project.

COUNCIL ACTION: Vote to Approve Contracts for Construction Manager Services by and Between the City of Altus, Oklahoma and Joe D. Hall as Construction Manager for both the Altus Senior Activity Center and the Altus Fire Rescue - Central Fire Station or Take Any Other Appropriate Action.

STAFF RECOMMENDATION: Stated Council Action



Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Fifteenth day of December in the year Two Thousand Fifteen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

City of Altus, Lessee Mr. Jack Smiley, Mayor 509 S. Main Altus, OK 73521-3135

and the Construction Manager: (Name, legal status and address)

Joe D. Hall General Contractors, LLC P.O. Box 100 Elk City, OK. 73648

for the following Project: (Name and address or location)

Altus Senior Activity Center (Former High School Library) 221 N. Park Lane Altus, OK 73521

The Architect: (Name, legal status and address)

Boynton Williams and Associates 900 36th Avenue N.W., Ste. #100 Norman, OK. 73072

The Owner's Designated Representative: (Name, address and other information)

Phillip W. Beauchamp

Email Address: pbeauchamp@altusok.gov

The Construction Manager's Designated Representative: (Name, address and other information)

Joe D. Hall

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified. The Architect's Designated Representative: (Name, address and other information)

Clarence Williams

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201TM–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

- § 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.
- § 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
 - .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
 - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
 - .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
 - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
 - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

- § 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.
- § 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

- § 2.3.1 General
- § 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

- § 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.
- § 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.
- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

- § 3.1 Information and Services Required of the Owner
- § 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.
- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103TM–2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

- § 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:
- § 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation shall be 2% of total bid amounts of all bid packages for the construction cost of the project determined at completion of the bidding process. This compensation will be applicable if Owner does not proceed with project. Reimbursable cost items are listed below:

Advertisements for Bids

Printing and distribution of plans and specifications

- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Compensation for Construction Management Fee shall be 10% of the cost of construction as set forth in this contract. General Requirements are considered cost of construction. Included in this contract will be added a 2% Contingency.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Compensation for ADD Change Orders shall be 10% C.M. Fee and 5% for General Requirements based on the cost of the additional work and no deduct in C.M. Fee or General Requirements for DEDUCT Change Orders.

- § 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:
- § 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One hundred percent (100.00 %) of the standard rate paid at the place of the Project.
- § 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

- § 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.
- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

- § 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
- § 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

Project Manager: \$2,950/wk Project Superintendent: \$2,950/wk Assistant Superintendent: \$2,200/wk

Clerical: \$1,000/wk

Carpentry Labor: \$1,400/wk General Labor: \$950/wk

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.
- § 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

- § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
- § 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- § 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
- § 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.
- § 6.6 Miscellaneous Costs
- § 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The basis of reimbursement for Builder's Risk shall be at a rate of .375% and reimbursement for General & Professional Liability Insurance shall be at a rate of .45% of the cost of construction. Compensation for bonds shall be 2% of the construction cost of the project.

1

- § 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- § 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.
- § 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.
- § 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.
- § 6.7 Other Costs and Emergencies
- § 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.
- § 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.
- § 6.8 Costs Not To Be Reimbursed
- § 6.8.1 The Cost of the Work shall not include the items listed below:
 - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office;
 - .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

1

- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the Twentieth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Twentieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

- § 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.
- § 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- § 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
 - .3 Add the Construction Manager's Fee, less retainage of Zero percent (0.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .4 Subtract retainage of Zero percent (0.00%) from that portion of the Work that the Construction Manager self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

- § 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. The percentage of retainage held on Subcontractors shall be 5%.
- § 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- § 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

- § 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when
 - .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
 - .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
 - .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

- § 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.
- § 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.
- § 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be

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recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond As Specified Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

- § 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.
- § 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[]	X]	Arbitration pursuant to Section 15.4 of AIA Document A201-2007
[]	Litigation in a court of competent jurisdiction
1	1	Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

- § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price
- § 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.
- § 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

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- § 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:
 - .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
 - .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
 - .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

- § 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.
- § 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

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§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

Clerical: \$50/hr. as needed

Project Engineer/Project Manager \$80/hr. as needed

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- 1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202[™]–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

.5	Other documents:		
	(List other documents, if ar	y, forming part of the Agreement.)	

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Joe D. Hall, Owner

(Printed name and title)



MAIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Fifteenth day of December in the year Two Thousand Fifteen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

City of Altus Mr. Jack Smiley, Mayor 509 S. Main Altus, OK 73521

and the Construction Manager: (Name, legal status and address)

Joe D. Hall General Contractors, LLC P.O. Box 100 Elk City, OK. 73648

for the following Project: (Name and address or location)

Altus Fire Rescue - Central Fire Station 108 North Park Lane Altus, OK 73521

The Architect: (Name, legal status and address)

Boynton Williams and Associates 900 36th Avenue N.W., Ste. #100 Norman, OK. 73072

The Owner's Designated Representative: (Name, address and other information)

Phillip W. Beauchamp

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Construction Manager's Designated Representative: (Name, address and other information)

Joe D. Hall

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The Architect's Designated Representative: (Name, address and other information)

The Owner and Construction Manager agree as follows.

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TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201TM–2007, General Conditions of the Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction

Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

- § 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.
- § 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
- § 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
 - .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract:
 - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
 - .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
 - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
 - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.
- § 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- § 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

- § 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.
- § 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.
- § 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

- § 2.3.1 General
- § 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

- § 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.
- § 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.
- § 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.
- § 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.
- § 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

- § 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.
- § 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.
- § 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

- § 3.1 Information and Services Required of the Owner
- § 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.
- § 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.
- § 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.
- § 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

- § 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103TM–2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 4.1 Compensation

- § 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:
- § 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation shall be 2% of total bid amounts of all bid packages for the construction cost of the project determined at completion of the bidding process. This compensation will be applicable if Owner does not proceed with project. Reimbursable cost items are listed below:

Advertisements for Bids

Printing and distribution of plans and specifications

- § 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
- § 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Compensation for Construction Management Fee shall be 10% of the cost of construction as set forth in this contract. General Requirements are considered cost of construction. Included in this contract will be added a 2% Contingency.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Compensation for ADD Change Orders shall be 10% C.M. Fee and 5% for General Requirements based on the cost of the additional work and no deduct in C.M. Fee or General Requirements for DEDUCT Change Orders.

- § 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:
- § 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One hundred percent (100.00 %) of the standard rate paid at the place of the Project.
- § 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

- § 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.
- § 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.
- § 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

- § 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.
- § 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

Project Manager: \$2,950/wk Project Superintendent: \$2,950/wk Assistant Superintendent: \$2,200/wk

Clerical: \$1,000/wk

Carpentry Labor: \$1,400/wk General Labor: \$950/wk

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

- § 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.
- § 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

- § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
- § 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
- § 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
- § 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.
- § 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- § 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- § 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.
- § 6.6 Miscellaneous Costs
- § 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The basis of reimbursement for Builder's Risk shall be at a rate of .375% and reimbursement for General & Professional Liability Insurance shall be at a rate of .45% of the cost of construction. Compensation for bonds shall be 2% of the construction cost of the project.

- § 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.
- § 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- § 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.
- § 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.
- § 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- § 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.
- § 6.7 Other Costs and Emergencies
- § 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.
- § 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.
- § 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.
- § 6.8 Costs Not To Be Reimbursed
- § 6.8.1 The Cost of the Work shall not include the items listed below:
 - Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office;
 - .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

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- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the Twentieth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Twentieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

- § 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.
- § 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- § 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
 - .3 Add the Construction Manager's Fee, less retainage of Zero percent (0.00%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .4 Subtract retainage of Zero percent (0.00%) from that portion of the Work that the Construction Manager self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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- § 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. The percentage of retainage held on Subcontractors shall be 5%.
- § 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- § 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

- § 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when
 - .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
 - .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
 - .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

- § 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.
- § 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.
- § 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be

recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond As Specified Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X]		Arbitration pursuant to Section 15.4 of AIA Document A201-2007
]]	Litigation in a court of competent jurisdiction
[-]	Other: (Specify)

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

- § 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.
- § 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

Clerical: \$50/hr. as needed

Project Engineer/Project Manager \$80/hr. as needed

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201TM—2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents: (List other documents, if any, forming part of the Agreement.)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Joe D. Hall, Owner
(Printed name and title)

(Printed name and title)

Item No.	

Date: <u>December 15, 2015</u>

AGENDA ITEM COMMENTARY

ITEM TITLE: Consider, Discuss and Vote to Approve an Agreement with the Oklahoma Tax Commission (OTC) for Administration of the Sales and Use Tax Ordinances of the City of Altus and an Agreement to Engage in Compliance Activities by the City of Altus And/Or Take Any Other Appropriate Action

INITIATOR: Elizabeth Smith

STAFF INFORMATION SOURCE: Jan Neufeld

BACKGROUND: The Oklahoma Municipal League Liaison Board and the Oklahoma Tax Commission (OTC) have recently agreed to the terms of the new sales and use tax administration agreement. The agreement, once executed by the City of Altus and OTC will replace the separate sales and use tax agreements currently in effect.

The main differences in this contract include:

- 1. A reduced retention fee rate (new rate is 0.5%);
- 2. The new OTC chairman must sign all agreements; and
- 3. OTC will be adding some confidential reports

FUNDING: N/A

EXHIBITS: Sales Tax Administration Agreement

COUNCIL ACTION: Vote to Approve an Agreement with the Oklahoma Tax Commission (OTC) for Administration of the Sales and Use Tax Ordinances of the City of Altus and an Agreement to Engage in Compliance Activities by the City of Altus And/Or Take Any Other Appropriate Action

STAFF RECOMMENDATION: Stated Council Action

AGREEMENT FOR ADMINISTRATION OF THE SALES AND USE TAX ORDINANCES OF THE CITY/TOWN AND AN AGREEMENT TO ENGAGE IN COMPLIANCE ACTIVITIES BY THE CITY/TOWN OF

THIS AGREEMENT is entered into this	day of	, pursu	ant to the	provisions of
Sections 2701 et seq. of Title 68 of the				
Commission, hereinafter referred to as	"Commission	," and the Ci	ty/Town o	f
Oklahoma, hereinafter referred to as "Muni				
use tax ordinances on file with the Commis	ssion hereinaf	ter referred to a	is "Ordinan	ces," levying
a municipal sales or use tax of	percent (%) upon	sales with	nin or outside
of the Municipality and to authorize M				
hereinafter defined.			•	

1. This Agreement is based upon the Ordinances for the collection of sales and uses taxes by the Municipality, certified copies of which are attached hereto and made a part hereof. The Municipality may, at any time and from time to time, amend or repeal the Ordinances and, to the extent that the Municipality amends or repeals the Ordinances, the Municipality shall promptly provide the Commission with a certified copy of the ordinance effecting such amendment or such repeal.

An increase or a decrease in the municipal sales or use tax rate shall become effective only on the first day of a calendar quarter. Provided, however, the sales and use tax rates levied by the Municipality if the Municipality levies both a sales and use tax, must be identical. The Municipality shall notify the Commission of an increase or a decrease at least seventy-five (75) days prior to the close of the current calendar quarter and shall provide the Commission with a certified copy of the ordinance affecting such increase or such decrease.

- 2. A. The Commission shall administer and shall enforce the Ordinances and shall collect the municipal sales and use tax, and the interest and penalties with respect thereto as provided in the Ordinances except as provided, in paragraph 16 below. It is recognized and acknowledged that:
 - (a) the Ordinances levy municipal sales tax upon all sales within the Municipality as authorized by Section 2701 of Title 68 of the Oklahoma Statutes; and
 - (b) the term "sale" as used in the Ordinances has the same meaning as the term "sale" has in the Oklahoma Sales Tax Code; and
 - (c) the Ordinances levy municipal use tax upon all transactions within or without the Municipality as authorized by Section 1411 of Title 68 of the Oklahoma Statutes; and
 - (d) the term "use" as used in the Ordinances have the same

meaning as the term "use" has in the Oklahoma Use Tax Code; and

(e) the permits for sales and use tax issued by the Commission shall be the sales and use tax permits used by the municipality for the enforcement and collection of sales and use taxes within and without the municipality and said permits, as issued by the Commission, shall include the zip code plus the four digit location code commonly called the zip plus 4, when available.

To facilitate such administration, such collection and such enforcement of local taxes, the Commission shall designate a Local Tax Coordinator of the Commission who shall be generally responsible for matters related to the collection of local taxes and, with respect to such matters, shall directly advise the Administrator of the Commission. The duties which may be performed by the Local Tax Coordinator and/or other employees of the Commission under his or her supervision, shall include, without limitation,

- B. (a) acting as liaison between the Commission and municipalities with respect to the administration, the collection and the enforcement of local taxes,
 - (b) addressing concerns of the Commission and/or taxpayers with respect to the administration, the collection and the enforcement of municipal taxes by municipalities,
 - (c) consulting with municipalities concerns and trends with respect to local taxes,
 - (d) coordinating collection and enforcement actions by the Commission and municipalities with respect to local taxes,
 - (e) coordinating the provision by the Commission to municipalities of information and
 - (f) providing educational and other support to municipalities in their collection and enforcement efforts.

In making decisions with respect to the administration of local taxes, the Commission will consider the view expressed by the Municipality.

The Municipality shall not request that the Local Tax Coordinator perform any duties which are the sole responsibility of the Municipality.

- 3. The method of computing sales tax to be used by vendors in collecting both state and municipal sales tax is prescribed in Section 1362 of the Oklahoma Sales Tax Code. The method of computing use tax to be used by vendors in collecting both state and municipal use tax is prescribed in Section 1401 of the Oklahoma Use Tax Code.
- 4. The discount (deduction) allowed to vendors in Section 1367.1 of the Oklahoma Sales Tax Code shall be applicable to both state and local sales tax remittances. Monetary allowances provided for in 68 O.S. § 1354.31 shall also be applicable to both state and local sales tax remittances. The discount (deduction) allowed to vendors in Section 1410.1 of the Oklahoma Use Tax Code shall be applicable to both state and local use tax remittances. Monetary allowances provided for in 68 O.S. § 1354.31 shall also be applicable to both state

and local use tax remittances.

- 5. The Commission shall retain, as its sole compensation for its services rendered hereunder, an amount not to exceed one-half of one percent (0.5%) of the municipal sales or use taxes collected for services rendered in connection with such collections and the interest and penalties with respect thereto, collected by the Commission hereunder. The applicable percentage is set forth in Exhibit A as incorporated herein.
- 6. Except as otherwise provided herein, the Commission shall give no preference in applying an amount received for state, municipal and county sales or use taxes owed by a taxpayer to the extent that such amount is less than the aggregate state, municipal and county sales or use tax liability of the taxpayer. Any such amount shall be applied pro rata to the satisfaction of the claims of the Commission, the claims of the Municipality and the claims of other municipalities and counties based on the portions of the aggregate state, municipal and county sales or use tax liability of the taxpayer represented by their respective claims.
- 7. The municipal sales or use tax received and collected by the Commission pursuant to this Agreement shall be deposited in the State Treasury as required by law. The Commission shall use its best efforts to cause to be paid to the Municipality no later than the tenth day of each calendar month all municipal sales and use tax, and the interest and the penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, less any amount withheld by the Commission under Paragraph 5 and less any amounts deducted by the Commission in connection with refunds hereunder.
- 8. The Commission shall require reports of municipal sales and use tax from vendors, shall maintain records of reports, receipts and collections from vendors. The Commission shall maintain the records in such a manner that the amount due the Municipality each month by a vendor can be determined by the Commission and can be provided to the Municipality. The requirement for the Commission to maintain its records in a verifiable form is intended to require the Commission to maintain its records in a form capable of producing reports that can be electronically downloaded into, at a minimum, an excel spreadsheet or its equivalent; the Commission will use a form which is capable of being understood by a person reviewing such records. The Commission shall make available to the Municipality a monthly statement of the municipal sales and use tax, and interest and penalties with respect thereto, received and collected by the Commission during the immediately preceding calendar month, the amounts, if any, refunded by the Commission to taxpayers during the immediately, preceding calendar month and the amount withheld by the Commission under Paragraph 5. The Commission shall allow an annual review of the Commission's expenditures associated with the collection and enforcement of municipal sales and use taxes.
- 9. In the event a vendor remits sales or use taxes due but fails to submit city attachments, or submits a report from which the sales or use tax due Municipality cannot be determined, the Commission will allocate to Municipality such sales or use tax received pro rata based on the vendor's percentage allocation for the most recent report filed or, if no report has been filed, according to the best information available to the Commission. Such amount, and any interest and penalty as provided in Section 217 of Title 68 of the Oklahoma Statutes with respect thereto, shall be paid to the Municipality in accordance with Paragraph 7. Interest will begin as of the date the vendor remittance is deposited to the State Treasury.
 - 10. The Municipality acknowledges that the Commission is responsible for making

refunds to taxpayers of municipal sales and use taxes previously collected by the Commission on behalf of the Municipality. The term "refunds" as used herein shall include payments made pursuant to filed claim for refund(s) or amended return(s) approved by the Commission. The Commission's determination of any taxpayer's liability for sales and use taxes shall be binding as between the Municipality and the taxpayer.

Any refund of municipal sales and use tax previously paid by the Commission to the Municipality shall be paid from subsequent collections of the municipal sales and use tax. Such refund shall be deducted from the collections payable by the Commission to the Municipality, in the immediately following calendar month following the notice requirements set out in paragraph eleven (11).

The Commission shall provide notice to the Municipality via the OKTap user 11. Account to municipalities so that a municipality may view all the requests for refunds that have been filed, processed and recommended approval. All claims for refund shall be documented as outlined in OAC 710:65-11-1 upon discovery of a remittance error by the vendor. Commission, through the Local Tax Coordinator, will notify Municipality at such time the Commission determines the final amount to be refunded pursuant to a claim or remittance error. The Commission shall make available to a municipality, upon request, copies of the claims processed and recommended for approval in the amount of two thousand dollars (\$2000.00) or more and related supporting documents prior to the claim being considered for approval by the Commission. The Commission shall post the requested claim documents on the municipality's OKTap user account to comply with this requirement. Municipality agrees that any amount contained in the notice given pursuant to this section will be considered as advisory only until such time as a final determination has been made by the Commission. Any municipal sales or use tax, and/or any interest and penalties with respect thereto, paid under protest by a taxpayer to the Commission during the immediately preceding calendar month shall be paid by the Commission to the Municipality as part of the payment being made by the Commission to the Municipality. If the protested municipal sales or use tax, interest or penalties are required to be refunded, such amount and any interest required to be paid thereon will be paid out of subsequent collections by the Commission.

The municipality may request by a blanket advisement to the Commission that it be notified of any hearing wherein the Commission hears a claim for refund of a protest of an assessment. If an affected municipality shall have requested such notice in writing, the Commission shall, at the same time the parties are notified of the scheduled hearing, provide written notice of the hearing date and time via electronic mail, e-mail, or mail through the United States Postal Service to the municipality affected.

- 12. In the event a municipality is notified as required and set out in paragraph 11, above, that it has been paid sales or use tax funds that should have been paid to another municipality, the Tax Commission shall adhere to repayment provisions of the provisions of paragraph 10.
- 13. The Commission shall provide to the Municipality a full and complete list of the names and the addresses of the persons and the entities which or who report doing business within the boundary of the Municipality during the preceding calendar year via the OKTap user Account. In addition the Commission shall via OKTap provide the following:
 - A. additions to, and deletions from, the full and complete list of the names and the addresses of persons and entities which or who report doing business during the

preceding calendar year within the boundary of the Municipality;

- B. a full and complete list of the persons and the entities specified in paragraph 12(a) which or who are more than sixty (60) days delinquent in filing and/or remitting municipal sales and use taxes pursuant to the Ordinances; and
- C. a full and complete, list of all persons and all entities paying municipal sales and use tax under the Ordinances, and/or interest and penalties with respect thereto, and the amount of such remittances.
- D. the number of audits completed and assessments determined by the Commission with respect to municipal sales and use taxes, and/or interest and penalties with respect thereto, under the Ordinances during the preceding calendar year; and

Commission also agrees to provide Municipality reports in addition to those outlined above under the following terms:

- A. The report is requested in writing or via e-mail, outlining the information required and regularity of the report.
- B. The report complies with all terms and statutes outlined within this agreement.
- C. The information requested is available to the Commission.
- D. Commission will be provided a minimum of thirty (30) days to compile new requests unless otherwise agreed.
- E. Commission shall provide the requested report(s) within ninety (90) days unless otherwise agreed.
- 14. The Commission shall monitor the administration, the collection and the enforcement of municipal sales and use taxes, and/or interest and penalties with respect thereto, under the Ordinances. The Commission shall provide the Municipality such information as may be requested by the Municipality with respect to any protest or any refund of municipal sales or use taxes levied by the Municipality. The Municipality shall also be entitled to consult with the Commission's legal staff about protests and refunds and, to the extent that a protest or a refund involves one or more hearings, the Municipality shall, through legal counsel or other designated staff employed by the Municipality, be entitled to be present and observe such hearing(s); provided, however, the administrative law judge or the Commission may limit the number of counsel or other designated staff, if any, who may be present to the extent necessary to permit the hearing to be conducted in an orderly fashion and without undue trepidation on the part of the taxpayer.

To the extent that such documents and/or such information relates to municipal sales or use taxes, and/or interest and penalties with respect thereto, and is requested, at any time and from time to time by the Municipality, the Commission shall promptly provide to the Municipality (a) copies of applications for sales tax permits, (b) copies of sales or use tax reports, (c) copies of installment or other payment plans, if any, with taxpayers and (d) other documents and other information.

The Commission shall promptly notify the Municipality of any conduct which the Commission believes might be the basis for a criminal prosecution by the Municipality under the Ordinances and shall provide to the Municipality all of the documents and the information in the possession of the Commission with respect thereto, including, without limitation, the names of employees of the Commission who might be witnesses with respect thereto.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes, which makes the records and the files of the Commission confidential (subject to specified exceptions) and which prohibits disclosure of such records and such files (subject to specified exceptions), includes the Commission's records and files with respect to the receipt and the collection of municipal sales and use tax. Nothing contained herein is intended to require the Commission to disclose to the Municipality any information whose disclosure to the Municipality is prohibited by Section 205.

The Commission acknowledges that (a) Section 205(c)(7) of Title 68 of the Oklahoma Statutes permits the Commission to furnish information disclosed by the records and the files of the Commission to an official person or body of this state who is concerned with the administration or the assessment of certain taxes, such as the Municipality, (b) Section 205(c)(22) of Title 68 permits the disclosure to the governing body or municipal attorney, if so designated by the governing body, of information directly involved in the resolution of issues arising out of the enforcement of a municipal sales and use tax ordinance, such as the Ordinances, pursuant to a municipal tax collection agreement, such as this Agreement, and (c) Section 22-107 of Title 11 of the Oklahoma Statutes and Section 205.1 of Title 68 of the Oklahoma Statutes permits the Commission to release specified information to municipalities.

The Municipality acknowledges that Section 205 of Title 68 of the Oklahoma Statutes may prevent the disclosure by the Municipality and persons associated with the Municipality of information which is provided by the Commission to the Municipality and that improper disclosure by the Municipality or any such person of such Information may result in civil and criminal liability. The Municipality shall comply with the restrictions imposed by Section 205.

- 15. The Commission has the authority to enter into an installment or other payment agreement with any taxpayer, including a taxpayer prosecuted under a municipal sales or use tax ordinance, for state and local taxes owed by the taxpayer. Commission will, through its use of a pay plan in order to keep a delinquent business open, collect the liability as quickly as possible by requiring a significant down payment and completion of the pay plan in as short a period as possible. The Municipality shall be entitled to consult with the Commission's legal staff about an installment or other payment agreement prior to negotiation of such an agreement. The installment or other payment agreement shall be void if the taxpayer becomes delinquent in future tax liability or payment under the agreement becomes delinquent. The Commission shall furnish a list of all sales and use taxpayers which have entered into agreements with the Commission on a monthly basis along with the terms, conditions and status of each such installment or payment agreement.
- 16. In the event of termination of this Agreement, the Commission will cause to be paid over to the Municipality, all municipal sales and use tax funds in its possession then due and payable under this Agreement. The Municipality shall thereafter be liable for and shall pay any refunds of municipal sales or use tax required by law to be made, including refunds of municipal sales or use tax, penalty and interest paid under protest that must be refunded and any interest required thereon. After such termination, the Commission's liability shall extend only to the amount of such funds being held by it. The Municipality agrees to pay any interest

required by law to be paid on such refunds.

17. The Commission shall have the authority to assess and to collect, on behalf of the Municipality, the municipal sales and use taxes levied by the Ordinances, and the interest and the penalties with respect thereto, including, without limitation, any municipal sales or use tax, interest and/or penalty existing on the date hereof except as provide in paragraph 18 below.

The Municipality agrees to refrain from contacting directly persons or entities doing business within the boundary of the Municipality subject to the requirements of paragraph 19. Municipality does have the inherent authority to contact vendors within and without the municipality concerning the vendor's alleged violation of municipal ordinances prior to the initiation of criminal prosecution.

The Municipality may inquire of the Commission into the compliance of persons and entities with the Ordinances and, to the extent that the Municipality determines that any person or any entity has not complied with the Ordinances, the Municipality may request the Commission to issue a proposed assessment against such person or such entity. To the extent that the Commission receives any such request, the Commission shall review such request within 45 days. If, after said review, Commission believes that-such request presents a basis for a proposed assessment, Commission shall issue a proposed assessment. Any such proposed assessment shall be resolved as provided in Sections 201 et seq. of Title 68 and the procedural rules promulgated by the Commission.

The Municipality may, at the option of the Municipality, request the Commission to initiate a show cause proceeding against a person or an entity which the Municipality believes, in good faith, not to be in compliance with the Ordinances or any provision thereof. To the extent that the Commission receives any such request, the Commission shall review such request within 45 days. If after said review, Commission believes that such request presents a basis for a show cause proceeding, Commission shall initiate a show cause proceeding. Such show cause proceeding shall be conducted as provided in the procedural rules promulgated by the Commission.

The Commission and the Municipality acknowledge the mutual interest of the Commission and the Municipality in maximizing compliance with the Ordinances and the collection of local taxes thereunder. The Municipality may, at any time and from time to time, either alone or in conjunction with other municipalities, submit a written proposal for collection and enforcement activities for consideration by the Commission; provided, however, it is expressly understood that any such written proposal must provide for coordination with the collection and enforcement activities of the Commission, provide for the use of the then applicable audit standards of the Commission and otherwise be in form and in substance to the Commission. In the event that Municipality's proposal is accepted by Commission, Municipality will be authorized to conduct the activities included in such proposal on behalf of Commission and no other action will be authorized by the Commission by a municipality or municipalities not included in the accepted proposal.

Provided further that upon the request of the municipality, either alone or in conjunction with other municipalities, the Commission shall enter into contractual agreements with the municipality or group of municipalities whereby the municipality or group of municipalities are authorized to implement or augment the Commission's enforcement through a contract with a private auditor(s) or audit firm(s) of the municipal tax. The auditor(s) or audit firm(s) shall first be approved by the Commission and once approved shall be appointed as an agent of the

Oklahoma Tax Commission for purposes of the audit. Contracts with a private auditor or audit firm are not subject to the limitations of Section 262 of title 68 of the Oklahoma Statutes, and the parties, the municipality, private auditor or audit firm and the Commission, are authorized to exchange necessary information to effectively perform the contracted audit. The municipality, its officers and employees and the private auditors or audit firms may receive all information necessary to perform the audit and shall preserve the confidentiality of such information as required by Section 205, title 68, of the Oklahoma Statutes, including the penalties set out therein. The Commission shall be furnished the audit results and all relevant supporting The municipalities shall pay for the private auditor(s) or audit firm(s) by deduction from the tax assessment resulting from said audit unless another method of payment is set out in the contract with the private auditor or audit firm. Any municipal sales and use tax funds recovered as a result of the use by the municipality of a private auditor or audit firm shall not be subject to the retention calculated by the Commission as provided in Paragraph 5 of this agreement, in addition the Commission shall pay to the municipality any retainage that the Commission shall be entitled to for collection of county sales and use tax and shall pay to the municipality the state's pro rata share of the expenses of the auditor. Provided further, the Commission shall have no obligation to any municipality that does not participate in an audit conducted under subsection D of Section 2702 of Title 68 of the Oklahoma Statutes or an audit conducted pursuant to this section.

Notice of a proposed independent audit shall be provided to the municipality and the municipality shall within 30 days provide acceptance or rejection of participation in the audit. Failure to act within the 30 day time period shall mean that the municipality shall not be included in the audit. Failure to act with respect to a particular independent audit within the 30 day time period shall relieve the Commission of its obligation to audit on behalf of the municipality with respect to that particular audit.

18. The Commission acknowledges the need for municipalities to have input into rulings made by the Commission regarding requests for waivers of penalties and interest assessed on municipal sales and use taxes. Therefore, the Commission agrees to provide municipalities with the opportunity to make recommendations regarding such waiver requests. Such notification shall not include waiver requests received by the Commission through its Voluntary Disclosure Agreement Program.

The Account Maintenance Division or the General Counsel's Office of the Commission will notify municipalities at least two weeks prior to submission of a waiver request to the Commission. The notification will apply to all waiver requests for penalties and interest that was assessed on state and local sales and use taxes in excess of Two Thousand Dollars (\$2,000.00). Any recommendation made by the municipality will be presented to the Commission at the time of consideration of the request. If the municipality fails to make a recommendation in the time allotted, the Division will present the request to the Commission without a municipal recommendation. The Division will notify the municipality of the Commission decision.

- 19. A City/town may commence compliance activities under the following conditions:
- A. The following words and terms, when used in this Agreement, shall have the following meaning, unless the context clearly indicates otherwise:
 - 1. "Agent" means an employee of the Municipality or person or entity acting under contract with the Municipality and certified by the Commission as an agent

for the purpose of compliance activities as set out in this agreement except for municipal criminal prosecution.

- 2. "Compliance activities" means all actions to assist or induce a delinquent seller to comply with applicable laws, rules and regulations, to accurately and timely collect, source, report and remit sales and use taxes within the municipality's jurisdiction and shall include:
 - a. The identification of and reporting to the Tax Commission any unregistered sellers making sales sourced to the municipality under the laws of this state. "Unregistered seller" shall mean any delinquent seller which has failed to apply for a sales or use tax permit with the Tax Commission. Provided, the term shall not include any out-of-state seller that does not have a legal requirement to register with the state;
 - b. The prosecution of any criminal violations of a municipal ordinance related to the payment of sales or use taxes. "Prosecution" shall mean the initiation of legal proceedings by the filing of a complaint in a municipal criminal court of record pursuant to Section 28-113 of Title 11 or by the filing of a complaint in a municipal court not of record pursuant to the provisions of Section 27-115 of Title 11; and
 - c. Any additional compliance activities that may be performed by the agent of the municipality on accounts of delinquent sellers that were assigned to the agent at the request of the municipality that do not result in a duplication of compliance activities.

Compliance activities **shall not include** the following activities, over which the Tax Commission shall have sole authority:

- a. Registering new taxpayer accounts,
- b. Issuing and administering taxpayer permits,
- c. Receiving returns,
- d. Receiving remittances of sales and use taxes.
- e. Issuing assessments,
- f. Conducting hearings under Section 212 of Title 68,
- g. Developing pay plans in consultation with the municipality as provided
- in the Agreement for Administration of the Sales and Use Tax Ordinances,
- h. Revoking permits,
- i. Taking legal action to close a business,
- j. Issuing refunds and credits,
- k. Managing audits, and
- I. Determination of taxability of sales transactions.
- 3. "Delinquent seller" means any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by law and fails to obtain a permit, file a sales tax return as required by law, or is delinquent in whole or in part in the collection and remittance of sales or use taxes.

- 4. "Enhanced collections" means any remittance of past due or unpaid state sales or use taxes, including penalty and interest, obtained from a delinquent seller that was not registered, underreported, failed to report or remit, failed to comply with a payment plan, or arising from liens filed by the Tax Commission following documented compliance activity of a municipality or person or entity acting under contract with such municipality.
- B. Municipality elects to engage in the compliance activities designated by notice to the Commission; provided that Municipality may change its designation upon timely notice.
- C. This Agreement shall include appointment of persons or entities approved by the Commission conducting compliance activities on behalf of Municipality as agents of the Commission. No appointment shall be necessary or required for Municipality to engage in prosecution of any criminal violations of its ordinance related to the payment of sales or use taxes.

All persons, including municipal employees and employees of entities acting under contract with a municipality, that will be performing compliance activities for Municipality must meet minimum qualifications provided herein and undergo training provided by the Tax Commission. The minimum qualifications shall consist of a bachelor's degree; or an equivalent combination of education and experience, substituting one year of experience in business management, tax revenue, credit collections, or investigative work for each year of the required degree. Provided, the minimum qualifications provided herein shall not apply to employees of municipalities seeking appointment as an agent if the municipality has a population less than 25,000.

Contracts with a private auditor or audit firm are not subject to the limitations of Section 262 of title 68 of the Oklahoma Statutes, and the parties, the municipality, private auditor or audit firm and the Commission, are authorized to exchange necessary information to effectively perform the contracted audit. The municipality, its officers and employees and the private auditors or audit firms may receive all information necessary to perform the audit and shall preserve the confidentiality of such information as required by Section 205, title 68, of the Oklahoma Statutes, including the penalties set out therein.

With the execution of this Agreement, Municipality shall provide the names of all persons, including employees of Municipality, who will be performing compliance activities on behalf of Municipality. The Commission shall issue letters of appointment for all persons who meet or are exempt from the minimum requirements.

Municipality agrees to notify the Commission when additional persons are added by Municipality to conduct compliance activities on behalf of Municipality. Municipality further agrees to immediately notify the Commission of the termination of employment or cancellation of contract of any person appointed as an agent for the purposes of conducting compliance activities.

D. The Commission shall provide to Municipality and agents appointed by the Commission to perform compliance activities all information necessary to perform compliance activities. Municipality and agent shall preserve the confidentiality of the information as required by Section 205 of Title 68 of the Oklahoma Statutes. Failure to comply with the statutory confidentiality requirements shall result in immediate

withdrawal of appointment of any person to perform compliance activities and may result in civil and criminal liability.

Nothing herein shall limit Municipality's use of information provided by the Commission in prosecution of violations of Municipality's tax ordinances.

- E. As provided in Section 2702(E)(3) of Title 68, the Tax Commission shall reimburse a municipality performing any of the compliance activities defined above as follows:
 - 1. The Tax Commission shall pay to the municipality an amount equal to three-fourths of one percent (3/4 of 1%) of enhanced collections from any unregistered seller identified and reported to the Commission by a municipality for any sales made during the period the seller was unregistered with the Tax Commission;
 - 2. The Tax Commission shall not retain any fee and refund any fee retained from the collection of city sales and use taxes remitted as a result of the prosecution of any criminal violations of a municipal ordinance; and
 - 3. The Tax Commission shall pay to the municipality an amount equal to three-fourths of one percent (¾ of 1%) of enhanced collections from any delinquent seller as a result of other compliance activities documented by the municipality or person acting under contract with such municipality.

To receive compensation, Municipality shall provide documentation of compliance activities which generated the enhanced collections. Documentation shall consist of reports, on forms prescribed by the Commission, listing the name of the delinquent seller, date of compliance activity, type of activity, and such other information as may be necessary to identify the delinquent seller, compliance activity, or enhanced collections.

The Commission shall provide reimbursements on a monthly basis and provide a monthly report to Municipality indicating, at a minimum, the name of the delinquent seller, amount of enhanced collections, and date of remittance by the delinquent seller in the previous month.

The Commission shall use its best efforts to cause reimbursements as a separate distribution to be paid to Municipality no later than the tenth day of each calendar month following the month of receipt of the report of enhanced collections filed with the Commission.

- 20. It is recognized and acknowledged that the <u>Municipal</u> Ordinances include criminal sanctions for violation of the Ordinances. Notwithstanding anything else contained herein, the Municipality shall have the exclusive authority to prosecute any criminal violations of the Ordinances and the Commission shall refrain from taking any such action. Nothing contained herein shall prevent the State of Oklahoma from prosecuting persons for crimes under state law, including, without limitation, embezzlement by a vendor of a municipal sales tax.
- 21. To the extent that the Municipality decides to prosecute criminally any action under this Agreement, the Commission and the Municipality shall cooperate, in good faith, to

maximize collections under the Ordinances and to minimize duplicative effort by the Commission and the Municipality.

- 22. Where the municipality takes the action recognized by paragraph 20 of this Agreement for prosecution to enforce its sales or use tax ordinance, all taxes shall be paid by the taxpayer directly to the Commission. Any resulting payment of municipal tax shall not be subject to the retention calculated by the Commission for the collection of city sales and use taxes as provided in Paragraph 5 of this agreement, subject to the implementation plan established in paragraph 2B of this agreement.
- 23. The Municipality agrees that, if there is a challenge to the constitutionality or the legality of the Ordinances or any provision thereof (other than a challenge based on the application by the Commission of the Ordinances or any provision thereof), the Municipality shall be responsible for the resolution of such challenge. If such a challenge is based on the application by the Commission of the Ordinances or any provision thereof, the Commission shall be responsible for the resolution of such challenge. The party responsible for the resolution of any challenge shall make all decisions with respect to the prosecution and the settlement of any litigation with respect to such challenge and the other party shall cooperate with the responsible party with respect to the resolution of such challenge. The Commission shall provide notice to the Municipality of any challenge. Notice will be provided within seven (7) business of the receipt of the challenge and the municipality shall be allowed to participate in any decision.
- 24. The change in the boundary of Municipality shall be effective for sales tax purposes only, on the first day of a calendar quarter following the enlargement of the municipal city limits. If a municipality should de-annex a territory the sales tax from business or firms located in the de-annexed area shall cease on the effective date of the de-annexation ordinance. Municipality shall give the Commission notice in writing of any annexation or de-annexation of territory to the municipality at least as required by Title 68 Oklahoma Statutes Section 2701. The notice shall include a verified copy of the boundaries of the newly annexed or de-annexed territory. In addition all Municipality limit lines shall be shown in map form, and certified to the Commission by the municipal clerk.
- 25. Neither Municipality nor Commission has entered into this Agreement with the intention of violating state law or the provisions of the Streamlined Sales Tax Agreement. If it is determined by either party that any provision violates either state law or the Streamlined Sales Tax Agreement, such provision of the Agreement shall be null and void. The remaining provision of the Agreement shall be in effect until the expiration or termination of the Agreement.
- 26. If a dispute arises from the application of paragraph nineteen (19) of this Agreement, and if the dispute cannot be settled through negotiation, the Commission and Municipality agree first to try in good faith to settle the dispute by mediation. Either party may request mediation before the Director of the Office of Management and Enterprise Services in the manner the Director deems appropriate.
- 27. This Agreement shall be in effect from ______, ____ until _____, and shall renew without action of the parties for additional terms of one (1) year provided that the current rate has not been changed and neither party has given written notice to the other party of its intent to terminate this Agreement prior to the expiration of the then current term. Either party may terminate this contract for any reason upon thirty (30) days written notice of its intent to terminate to the other party.

IN WITNESS WHEREOF, the parties have set their hands and affixed their official seals the day and year first above written.

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OKLAHOMA TAX COMMISSION

A Municipal Corporation	- Arm
Mayor	Steve Burrage, Chairman
	Dawn Cash, Vice-Chairman
ATTEST: (CITY SEAL)	Il total
Municipal Clerk	Thomas E. Kemp Jr Secretary-Membe
ATTEST: (STATE SEAL)	
Assistant Secretary – OTC	-
APPROVED BY THE CITY OF	LEGAL DEPARTMENT
BY	DATE
City Attorney	

EXHIBIT A

Retention Fee = 0.5%